SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 704.

THE UNITED STATES, APPELLANT,

vs.

THE STEAMSHIP "OLINDE RODRIGUES," LA COMPAGNIE GÉNÉRALE TRANSATLANTIQUE, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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United States of America, eastern district, South Carolina, in the district court.

At a district court of the United States for the eastern district of South Carolina, begun and holden at the court-house, in the city of Charleston, on the 22 day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and on the subsequent days, as stated in the record, before the Hon. William H. Brawley, United States judge, holding said court, according to the form of the act of Congress in such case made and provided, the following proceedings were had:

1 *Libel*—Filed 22 July, 1898.

The United States of America, district of South Carolina, in the district court, in admiralty.

To the Honorable William H. Brawley, judge of the district court of the United States, for the district of South Carolina:

The libel of Abial Lathrop, attorney of the United States for the district of South Carolina, who libels for the United States and for all parties in interest against the ship or vessel called the "Olinde Rodrigues," her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That, pursuant to instructions from the President of the United States, W. M. Folger, of the United States Navy, in and with the United States ship of war the "New Orleans," her officers and crew, did, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said ship or vessel called the "Olinde Rodrigues," of 1,675 registered tons, with a cargo on board of the same, and commanded by Captain M. Pherivong, in attempting to violate the blockade which had been proclaimed by the President of the United States to exist at the port of San Juan, Puerto Rico, and which was then rendered effective by the naval forces of the United States, and that the said ship and cargo have been brought into the port and harbor of Charleston, in the State of South Carolina, where the same now are, within the jurisdiction of this court; and that the said vessel and cargo are lawful prize
2 of war, and subject to be condemned and forfeited to the United States as such.

Wherefore, the said attorney prays that all persons having or claiming any interest in the said vessel or cargo may, by the proper process of this court, be duly notified of the allegations and prayer of this libel, and called to appear and claim the same, that the nature, amount, and value of said cargo may be determined; and that, on proper proofs being taken and heard, and all due proceedings being had, the said vessel, the "Olinde Rodrigues," together with her tackle, apparel, furniture, and cargo, may, on the final hearing of this cause, by the definitive sentence and decree of

this court, be condemned, forfeited, and sold as prize of war, and the proceeds distributed according to law.

ABIAL LATHROP,
United States Attorney.

Let monition and attachment issue, returnable August eighth (8th August), 1898.

WM. H. BRAWLEY,
U. S. Judge.

22 July, 1898.

3 *Warrant of arrest*—Filed 22 July, 1898.

THE UNITED STATES OF AMERICA,
South Carolina district.

In the court of admiralty of the United States of America, for South Carolina district.

The United States of America to the marshal of the court of admiralty for the district aforesaid, or to his lawful deputy, greeting:

You are hereby commanded without delay to arrest the ship "Olinde Rodrigues" and her cargo in whose possession soever the same may be found within the jurisdiction of this said court, and to cite the owners of the said ship "Olinde Rodrigues" and of her cargo, and all other persons whomsoever having, or pretending to have, any right, title, claim, or interest therein, to be and appear before the Hon. Wm. H. Brawley, the judge of the said court, at the court-house, in Charleston, on Monday, 8th August, 1898, to answer the libel of the United States in a certain cause of admiralty jurisdiction.

Witness, Hon. Wm. H. Brawley, judge of the court at Charleston, the twenty-second day of July, in the year of our Lord one thousand eight hundred and ninety-eight, and of the sovereignty and independence of the United States of America the 123rd year.

ABIAL LATHROP,
U. S. Attorney, Libellant's Proctor.

[SEAL.] C. J. C. HUTSON,
C. D. C. U. S., S. C.

4 *Return of service.*

Paul Moore, office deputy U. S. marshal, being duly sworn, says that on July 22, 1898, at Charleston, S. C., he attached the within-named vessel, and that he served a copy of within warrant of arrest on Maurice Pherivong, captain of said vessel, and that he posted copies on the said vessel and on the court-house door.

PAUL MOORE, *Office Deputy.*

Sworn to before me July 23, 1898.

RICHARD W. HUTSON,
Dep. C. D. C. U. S., S. C.

5 *Monition.*—Filed 22 July, 1898.

UNITED STATES OF AMERICA,
Eastern District of South Carolina, in Admiralty, ss:

The President of the United States of America, to the Marshal of the District of South Carolina, greeting:

Whereas a libel hath been filed in the district court of the United States for the eastern district of South Carolina on the twenty-second day of July, in the year of our Lord one thousand eight hundred and ninety-eight, by the United States against the ship "Olinde Rodrigues," her tackle, apparel, and furniture and cargo, in a cause of prize, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court on that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., and cargo, may be cited in general and special to answer the premises and all proceedings being had that the said ship or vessel, her tackle, etc., and cargo may for the causes in said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore commanded to attach the said ship or vessel, her tackle, &c., and cargo, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court,
6 to be held in and for the eastern district of South Carolina, on Monday, the eighth day of August next, at eleven o'clock in the forenoon on the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. Wm. H. Brawley, judge of the said court, at the city of Charleston, in said district, this twenty-second day of July, A. D. 1898.

ABIAL LATHROP,
United States Attorney, Proctor for Libellant

[SEAL.] C. J. C. HUTSON,
C. D. C. U. S., S. C.

Return of service.

Paul Moore, office deputy U. S. marshal, being duly sworn, says that on July 22, 1898, at Charleston, S. C., he attached the within named vessel, and that he served a copy of within monition on Maurice Pherivong, captain of said vessel, and that he posted copies on the said vessel and on the court-house door.

PAUL MOORE, *Office Deputy.*

Sworn to before me July 23, 1898.

RICHARD W. HUTSON,
Dep. C. D. C. U. S., S. C.

7 *Standing interrogatories (in preparatorio.)*

Standing interrogatories to be administered by a prize commission to all persons that may be produced as witnesses to be examined in preparatorio, in relation to any ship or vessel, goods, wares, or merchandise, which may be captured or taken as prize and brought into the district of South Carolina. Let each witness be interrogated to every of the following questions, and their answers to each interrogatory be written down under his direction and supervision:

1. Where were you born, and where do you now live, and how long have you lived there? Of what province or State are you a subject or citizen, and to which do you owe allegiance? Are you a citizen of the United States of America? Are you a married man, and, if married, where do your family and wife reside?

2. Were you present at the capture or taking of the vessel, or her lading, or any of the goods or merchandises concerning which you are now examined?

3. When and where was such seizure and capture made, and into what place or port were the same carried? Had the vessel so captured any commission, or letters, authorizing her to make prizes? What and from whom? For what reasons or on what pretence was the seizure made?

4. Under what colors did the captured vessel sail? What other colors had she on board, and for what reason had she such other colors?

5. Was any resistance made at the time of the capture, and by whom? Were any guns fired, how many, and by whom? By what ship
8 or ships was the capture made? Were any other, and what, ships in sight at the time of the capture? Was the vessel captured a merchantman, a ship of war, or acting under any commission as a privateer or letter of marque and reprisal, and to whom did such vessel belong? Was the capturing vessel a ship of war, a letter of marque and reprisal, or privateer, and of what force?

6. Had the capturing vessel or vessels any commission to act in the seizure or capture of the vessel inquired about, and from whom, and by what particular vessel was the capture made? Was the vessel seized condemned, and if so, when and where, and for what reason, and upon what account, and by whom, and by what authority or tribunal was she condemned?

7. What was the name of the vessel taken, and of her master or commander? Who appointed him to the command of the said vessel, and where? How long have you known the vessel and him, and when and where did he take possession of her, and who by name delivered the same to him? Where is the fixed place of abode of the master, with his wife and family, and how long has he lived there? If he has no fixed place of abode, where was his last place of residence and how long did he live there? Where was he born? Of what country or State is he a subject or citizen?

8. Of what tonnage or burden is the vessel which has been taken and about which you are examined? What number of the vessel's company belonged to her at the time she was seized and taken and how many were then actually on board her? What countrymen are they?
9 Did they all come on board at the same port and time, or at dif-

ferent ports and times, and when and where? Who shipped or hired them, when and where?

9. Did you belong to the company of the vessel so captured, at the time of her seizure, and in what capacity? Had you, or any of the officers, or mariners, or company, belonging to the said vessel at the time of her capture, any part, share, or interest in the same, or in the goods or merchandise laden on board her; and what in particular, and what was the value thereof at the time the said vessel was captured and the said goods seized?

10. How long have you known the said vessel? When and where did you first see her? How many guns did she carry? How many men were on board of her at the beginning of the engagement, before she was captured? Of what country build was she? What was her name and how long was she so called? Whether do you know of any other name she was called by, and what were such names as you know or have heard?

11. To what ports and places was the vessel, concerning which you are now examined, bound on the voyage wherein she was taken and seized? Where did the voyage begin, and where was the voyage to have *to have* ended? What sort of lading did she carry at the time of her first setting out on the voyage, and what particular sort of lading and goods had she on board at the time she was taken and seized? In what year and in what month was the same put on board? Do you, or not, know she had on board during her last voyage, and when, goods contraband of war or otherwise prohibited by law, and what goods?

10 12. Had the vessel, of which you are examined, any passport or seabrief on board, and from whom? To what ports or places did she sail during her last voyage, before she was taken? Where did her last voyage begin, and where was it to have ended? Set forth the kind of cargoes the vessel has carried to the time of her capture, and at what ports such cargoes have been delivered. From what ports and at what time, particularly from the last clearing port, did the said vessel sail, previously to the capture?

13. What lading did the vessel carry at the time of her first setting sail in her last voyage, and what particular sort of lading and goods had she on board at the time she was taken? In what year and in what month was the same put on board? Set forth the different species of the lading, and the quantities of each sort.

14. Who were the owners of the vessel and goods, concerning which you are now examined, at the time of their capture and seizure? How do you know they were owners thereof at the time? Of what nation or country are they by birth, and where do they live with their wives and families? How long have they resided there? Where did they reside previously, to the best of your knowledge? Of what country or state are they subjects or citizens?

15. Was any bill of sale given, and by whom, to the owners of the vessel, and in what month and year? Where, and in presence of what witnesses was it made? Was any, and what engagements entered into concerning the purchase, further than what appears upon the bill

11 of sale? Where did you last see it, and what has become of it?

16. In what port or place, and in what month and year, was the

lading found on board the vessel, at the time of her capture or seizure, first put on board her? What were the names of the respective laders or owners, or consignees thereof? What countrymen are they? Where did they reside before, to the best of your knowledge, and where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any of the said laders or consignees any, and what, interest in the said goods? What were the several qualities, quantities, and particulars of the said goods; and have you any, and what, reason to know or fully believe that if the said goods shall be restored and unladen at the destined ports, they did, do, and will belong to the same persons, and to none others?

17. How many bills of lading were signed for the goods siezed on board the said vessel? Were any of those bills of lading false or colorable, or were any bills of lading signed which were different in any respect from those which were on board the vessel at the time she was taken? What were the contents of such other bills of lading, and what became of them?

18. Have you in your possession, or were there on board of the said vessel, at the time of her capture, any bills of lading, invoices, letters, or other writings, to prove or to show your own interest, or the interest of any other person, and of whom, in the vessel, or in the goods concerning which you are now examined? If in your power, produce the same, and set forth the particular times when, where, and in what man-
12 ner, and upon what consideration you became possessed thereof. If you can not produce such paper evidences, then state in whose possession you last saw them, or where you know or believe they are kept, and when and by whom they were brought or sent within this district; and also set forth the contents or purport of such papers.

19. State the degrees of latitude and longitude in which the said vessel and her cargo were captured, as also the year, month, and day, and time thereof, in which such seizure was made, and in or near what port or place, and whether it was a port of any State or Territory of the United States of America, and what one. Was any charter party for the voyage upon which the said vessel was captured signed and executed, and by whom, and when? If in your possession, produce the same. If not, set forth its contents and state what has become of it.

20. What papers, bills of lading, letters, or other writings relating to the vessel or cargo, were on board the vessel at the time she took her departure from her last clearing port, before she was taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or canceled, or attempted to be concealed, and when, and by whom, and who was then present?

21. Did you or the owner, master, or person having command of the said vessel or her navigation, at the time and place of her capture, know or have notice that such place or port was in a state of war with the United States, and that the naval forces of the United States held such port in a state of blockade? How, when, or where had you such knowl-
edge or notice, and when and where did the master or commandant
13 obtain it?

22. Was such port under an order of blockade by the Government of the United States at the time the said vessel entered or made an

attempt to enter the same? Had warning or notice of such blockade been given to or received by the owner, master, or commandant of said vessel, before or at the time she entered or attempted to enter the said port, and when and in what manner? Had notice in writing been indorsed on the register or other ship's papers of the said vessel, and when, where, and by whom of an existing blockade of such port, before she entered or attempted to enter the same, or before the time of her sailing or attempting to sail therefrom?

23. Was the register of the vessel about which you are examined shown to or examined by any officer of the United States Navy, or by any revenue officer of the United States, before she was captured and taken, and before she entered the port at or near which she was taken and seized, and was the register or other ship's papers endorsed by said United States officer? Declare fully all you know, or have reason to believe, respecting this interrogatory, stating the persons, times, and places connected therewith.

24. Do you know, or do you believe from information, and if the latter, from what information, and when and how was it obtained, that the vessel inquired about, at any time or times after the blockade of the said port, and with notice thereof, and when, attempted covertly and secretly to enter the said blockaded port, or to sail therefrom, without
14 success? Disclose fully all your knowledge, information, and belief thereon, with the particulars upon which the same is founded.

25. Has the vessel concerning which you are now examined been at any time, and when, seized as prize and condemned as such? If yea, set forth into what port she was carried, and by whom and by what authority, or on what account she was condemned.

26. Have you sustained any loss by the seizing and taking the vessel concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

27. Is the said vessel or goods, or any and at what ports, insured? If yea, for what voyage is such insurance made, and what premium, and when, and by what persons, and in what country was such insurance made?

28. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees or any person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

29. Let each witness be interrogated of the growth, produce, and manufacture, on board the vessel. Of what country and place was the laden concerning which they are now interrogated, or any part thereof?

30. Whether all the said cargo, or any and what part thereof,
15 was taken from the shore, or quay, or removed or transshipped from one vessel to another; from what and to what shore, quay, and vessel, and when and where was the same so done?

31. Are there in any country besides the United States, and where, or on board any and what vessel, or vessels, other than the vessel concerning which you are now examined, any bills of lading, invoices, letters,

instruments, papers, or documents relative to the said vessel or cargo, and of what nature are they, and what are their contents?

32. Were any papers delivered out of the said vessel, any carried away in any manner whatsoever, and when, and by whom, to whom, and in whose custody, possession, or power do you believe the same now are?

33. Was bulk broken during the voyage on which you were taken, or since the capture of the said vessel, and when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

34. Were any passengers on board the aforesaid vessel? Were any of them secreted at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession, or occupation? Had they any commission—for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which, of the passengers any, and what, property, or concern, or authority, directly or indirectly, regarding the vessel and cargo? Were there any officers, soldiers,
16 or mariners, secreted on board, and for what reason were they secreted? Were any citizens of the United States on board, or secreted, or confined at the time of the capture? How long, and why? Whether any persons on board the said vessel, at the time of her capture, were citizens or residents of any State or Territory of the United States then in a state of war or rebellion against the United States, its Government, and laws? If so, who, by name, and of what State or Territory? What was their employment on board the vessel, and what their destination?

35. Were and are all the transports, sea-briefs, charter parties, bills of sale, invoices, and papers which were found on board entirely true and fair, or are any of them false or colorable? Do you know of any matter or circumstance to affect their credit? By whom were the passports or sea-briefs obtained, and from whom? Were they obtained for this vessel only, and upon the oath or affirmation of the persons therein described, or were they delivered to or on behalf of the person or persons who appear to have been sworn or to have affirmed thereto without their having ever, in fact, made any such oath, or affirmation? How long a time were they to last? Was any duty or fee payable and paid for the same, and is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often, and has the duty or fee been paid for such renewal? Was the vessel in a port in the country where the passports and sea-briefs were granted; and if not, where was
17 the vessel at the time? Had any person on board any passport, license, or letters of safe conduct? If yea, from whom, and for what business? If it should appear that there are in the United States, or in any other place or country besides the United States, any bills of lading, invoices, instruments, or papers, relative to the vessel and goods concerning which you are now examined, state how they were brought into such place or country. In whose possession are they, and do they differ from any of the papers on board, or in the United States, or elsewhere, and in what particular do they differ? Have you written or signed any letters or papers concerning the vessel and her cargo? What was their purport? To whom were they written and sent, and what has become of them?

36. Towards what port or place was the vessel steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship papers? Was the vessel before or at the time of her capture sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered at any, and what time, and to what other port or place, and for what reason?

37. By whom and to whom hath the said vessel been sold or transferred, and how often? At what time and at what place, and for what sum or consideration? Has the same been paid or satisfied? Was
18 the sum paid, or to be paid, a fair and true equivalent, or what security or securities have been given for the payment of the same; and by whom, and where do they now live? Do you know or believe in your conscience such sale or transfer has been truly made and not for the purpose of covering or concealing the real property? Do you verily believe that if the vessel should be restored she will belong to the persons now asserted to be the owners, and to none others?

38. What guns were mounted on board the vessel, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other guns, weapons, warlike arms, or armament of any name or description, and if any, what? Were there any parts of warlike arms not put together or finished, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand-grenades, flints, percussion caps, or any other thing known to be intended for military equipments? Were there any belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing or accoutrements, or any parts of them, or any sort of warlike or naval stores? Were any of such warlike or naval stores, or things, thrown overboard to prevent suspicion at the time of the capture; and were any such warlike stores before described concealed on board under the name of merchandise, or any other colorable appellation, in the ship papers? If so, what are the marks on the casks, bales, and packages in which they were concealed? Are any of the before-named articles, and which, for the sole use of any fortress or garrison in the fort or place to which such vessel was destined? Do you know or have you heard of any ordinance, placard, or law existing in such
19 country or State forbidding the exportation of the same by private persons without license? Were such warlike or naval stores put on board by any public authority? When and where were they put on board?

39. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the vessel and cargo concerning which you are now examined, at the time of the capture?

40. Did the said vessel on the voyage in which she was captured (or on), or during any or what former voyage or voyages, sail under the convoy of any ship or ships of war or other armed vessel or vessels? For what reason or purpose did she sail under such convoy? Of what force was, or were, such convoying ship or ships, and to what State or

country did the same belong? What instructions or directions had you or did you receive on each and every of such voyages, when under convoy, respecting your sailing or keeping in company with such armed or convoying ship or ships; and from whom did you receive such instructions or directions? Had you any, and what, directions or instructions, and from whom, for resisting or endeavoring to avoid or escape from capture, or for destroying, concealing, or refusing to deliver up your vessel's documents and papers, or any and what other papers that might be or were put on board your said ship? If so, state the tenor of such instructions and all particulars relating thereto. Are you in possession of such instructions or copies thereof? If so, leave them with the commissioner, to be annexed to your deposition.

20 41. Did the said vessel, during the voyage in which she was captured, or on making any and what former voyage or voyages, sail to or attempt to enter any port under blockade by the arms or forces of any and what belligerent power? If so, when did you first learn or hear of such port being so blockaded, and were you at any time, and what time, and by whom, warned not to proceed to, or to attempt to enter into, or to escape from, such blockaded port? What conversation or other communication passed thereon? And what course did you pursue upon and after being so warned off?

42. Whether or no the vessel concerning which you are examined did sail on her last voyage, prior to her seizure, carrying a commission or license as a privateer, or letter of marque or reprisal, or other authority from any person or persons, to cruise against the persons or property of citizens of the United States, and to make prizes thereof? By whom was such authority licensed or direction given, and when? Was it in writing? If so, did it remain with the vessel up to the time of her capture, or was it destroyed or concealed previous thereto? When and by whom? What were the contents or purport thereof? State all the facts in your knowledge within this enquiry, and the sources of such knowledge. And also state fully all the acts known to you to have been done by the vessel, her master, or crew under such commission or license up to the period of her capture.

43. Whether or no the said vessel enquired about, at any time, and when and where, sailed or acted in company or concert with any other armed vessel or vessels, and what, in cruising against, pursuing,

21 or seizing as prize, any persons, vessels, or property of citizens of the United States? Declare fully and particularly your knowledge, information, and belief therein.

IN THE UNITED STATES COURT,
District of South Carolina:

Ordered that the interrogatories herein contained, being forty-three in number, be adopted as the standing interrogatories in preparatorio for use in this court.

WM. H. BRAWLEY, *U. S. Judge.*

22 *Testimony in preparatorio.*

The United States of America, district of South Carolina.

THE UNITED STATES
vs.
THE "OLINDE RODRIGUES."

Deposition of AUGUSTE JULIEN, a witness produced, sworn, and examined in preparatorio on the 1st day of August, 1898, at Charleston, S. C., on the standing interrogatories established by the district court of the United States for the district of South Carolina, said witness having been produced for the purpose of such examination by the United States attorney in behalf of the captors of a certain ship or vessel called the "Olinde Rodrigues" and her cargo. Testimony interpreted by sworn interpreter.

1st. I was born at Rodrigues, colony of Mauritius; 14 years I lived in my own birthplace; then I lived 6 years and a half in France, and 10 months in Hayti, my last residence. I am a subject of Mauritius, a British subject, and owe allegiance to England. I am not a citizen of America. I am not a married man. My parents reside at Mauritius.

2nd. Yes.

3rd. On the 17th July, between 8 and 9 o'clock in the morning, a little beyond San Juan, and we were brought into Charleston. He does not know if the vessel had any commission. He says he heard Lieutenant Russell say to the commander of the ship, "You tried to run the blockade, and now you are taken, and you must go to Charleston."

23 4th. French. They had also the postal flag flying to the mast and the company's flag. The idea, he understood, why they had them out was to signal to the people at San Juan that they could not make the port; that they could not enter the port; that is what he heard stated by an officer of the boat.

5th. No resistance was made. The "New Orleans" fired one gun, he believes. There was only one sailing vessel in sight, going in the opposite direction. The vessel captured was a merchant vessel and a passenger vessel and postal vessel, belonging to the Compagnie Generale Trans-Atlantic. The capturing vessel was a man-of-war of the United States, of 10 large guns, he understood.

6th. He does not know.

7th. The "Olinde Rodrigues;" her master, Captain Pherivong. He supposes he was appointed by the company, but he does not know. He travelled with the same captain going to Hayti 10 months ago. He does not know the place of abode of the captain. He does not know anything about the captain. He lives in France, he thinks. He does not know whether he was a citizen of France.

8th. He thinks 3,087, and 17 horsepower. He does not know how many were in the crew. He thinks 22 first-class passengers and several children. They were from different countries—Hayti, San Domingo, and France. They were taken on board at Port au Prince, Cape Haytien, and Port au Platte. He does not know who hired the crew.

24 9th. I was a passenger, and had no interest except as a passenger.

10th. He knew the ship first at Bordeaux about 10 months ago,

when he took passage on board of her; he has never seen any guns on board. He heard that she was bought from the German Hamburg Co.; he does not know where she was built; her name is the "Olinde Rodrigues," and he does not know any other.

11th. If it was not San Juan it was St. Thomas, he thinks; the voyage began at Port au Prince and was to terminate at Havre; she carried coffee, logwood, and tobacco, he thinks; he does not think any was taken off before the seizure, in the month of July, 1898. He does not know whether she had on board goods contraband of war.

12th. He does not know whether she had any passports. She sailed from Port au Platte to San Juan or St. Thomas, he does not know which; he thinks to either of those two places. The voyage began at Port au Prince and was to have terminated at Havre. The vessel carried passengers and the cargo he has stated above, and also the mail; no cargo had been delivered at all. July 16th she sailed from Port au Platte.

13th. Coffee, tobacco, and logwood, and the same cargo was on board when she was taken; he thinks the same was put on board in July, 1898. He has heard she had 6,000 bags of coffee, but he does not know how much tobacco or logwood.

14th. He does not know the owners of the goods; the vessel
25 belongs to the Compagnie Generale Trans-Atlantic; he has always heard they own the vessel; it was a French company, and they lived in France.

15th. The only things that he saw were published on the card aboard the vessel.

16th. At Port au Platte, Gonaives, and Port au Prince, and St. Marque; he does not know the owners of the cargo. There were 6,000 bags of coffee; the tobacco he does not know the amount of, or the logwood.

17th. He does not know how many bills of lading were signed, and he does not know whether any were false.

18th. No; he has none in his possession, and does not know anything about that question.

19th. The 17th July, this year, between 8 and 9 o'clock a. m.; he does not know the latitude or longitude; it was near San Juan, Porto Rico; it was not any port of the United States. He does not know anything about the charter party.

20th. He does not know anything about the papers of the vessel, or whether any were burnt or destroyed, or whether any were concealed.

21st. Yes, he knew the port was in a state of war with the United States. He was aware of the fact that the port was blockaded, and the captain was also aware of it, because he boasted in his presence of having forced the blockade; he says he knew it from a telegram from Hayti about the 5th July.

26 22nd. He knew it by a telegram, and the captain on his last voyage, coming from Havre to San Thomas, heard there that the blockade existed, but he made the remark, as there was no official notice thereof, he would enter San Juan while on his way to Port au Prince; when he left San Juan he was stopped by one of the U. S. vessels, the "Yosemite;" the captain then gave him a written notice of the blockade. He says this knowledge he gained from the Trans-Atlantic Co., and he says he heard it also from the captain, who boasted he had run the blockade. While going out of San Juan the "Yosemite" stopped

his vessel and some man came on the boat and told him the blockade existed, and the captain said he had no knowledge of it, and so they examined his papers and gave him notification in writing. This he heard from the captain's own lips; he had heard it from the telegram, and he also heard it from the captain's own lips.

23rd. I have already answered that in the above question.

24th. He says his personal opinion is that the vessel would have entered San Juan if they had been able to do so; his personal opinion is that they would have run the blockade if they could have done so without danger of being captured. His first reason for that belief is this, that the captain had made a boast of having forced the blockade once before, knowing that the place was blockaded, but stating as his grounds for doing so that he had no official notification, but he knew it; and his second reason is, that they never could get an answer—definite answer—from any of the officers as to where they were going, and
27 when leaving Port au Platte they generally state where the destination is, but at this time nothing was posted as to the destination. He says he was a first-class passenger. He heard from a passenger, which passenger got his knowledge from a sailor, that there was irregular merchandise in the bottom of this vessel consigned for San Juan. He says he heard while on board that if on arriving at Cape Haytien or Port au Platte they received a favorable telegram from either San Juan or St. Thomas, they would then go to San Juan. Further, on the 17th, Sunday morning, at about 6 o'clock he came upon the deck to see if any war vessels were in sight, and he noticed then on the deck of the vessel three flags fastened on a rope ready to be hoisted, the French flag, the postal flag, and the company's flag; they were ready to be hoisted, and he asked the officer, "Are we going to San Juan?" He replied, "I don't know." He asked him, "What are those flags for?" He answered, "To give the signals on land that we can't enter."

25th. I don't know whether the vessel has ever been seized and condemned as a prize.

26th. Yes, by the delay; he intended to go and see his parents, and as the vessel was taken he was detained. There is a boat that leaves every 2 months, and now he will miss it and he will be at considerable expense—2 months at the hotel at least; it will cost him 2 months' hotel bills on account of this delay. No, he has not received any indemnity; he says the British consul answered he is not allowed to interfere in such matters, and he has not been offered any satisfaction.

28 27th. He does not know.

28th. He does not know.

29th. From the Antilles.

30th. It was brought by barges to the boat; there were no quays there; at Cape Haytien they took none, and the tobacco at Port au Platte, and the coffee at Gonaives and St. Marque and Port au Prince.

31st. He does not know.

32nd. He does not know.

33rd. He does not know.

34th. Yes; he does not know whether any were secreted; he knows all the first-class passengers; the passenger list will show their names; there were 2 from Hayti, 2 from Jamaica, and 1 from Mauritius, and the others are French and 4 from San Domingo. There are 2 nuns from Jamaica.

One, late minister of state, from Hayti and the son of the President of Hayti, and 2 French nuns, and 2 French priests, 2 merchants and a retired merchant and myself. There are three little boys, who are going to college in France, and a little girl. The first-class passengers are destined, except one, for Havre. I think one had some property on board; I forget his name; he is the third merchant; he is from the island of Corsica; I think he owns some goods. I don't think any soldiers or officers or mariners were secreted on board. There were no Amer-
29 icans on board. I don't know about the rest of the question.

35th. I don't know anything about the passports; I don't know whether any person on board had a letter of safe conduct, and I don't know anything about the matters contained in #35.

36th. The same direction as he told you before, either St. Thomas or San Juan, as he has said he does not know whether her course was altered. He says they changed their course to go through this channel [pointing to map]. Before getting opposite San Juan he thinks they saw an American man-of-war; he does not know whether her course was altered. He could see the houses of San Juan very distinctly from the ship without glasses at the time of the capture. He says they left Port au Platte; they were going to St. Thomas by a section of a circle, and when near San Juan they changed route so as to go through the channel between the Virgin Islands and San Juan. He knows nothing about the altering of the course.

37th. He does not know.

38th. He never saw any guns. He says he heard they had a cannon on board, as all postal vessels carry them, but they were below deck. When they made the trip in her before they had no cannon in her. He says they are the guns generally carried by mail steamers, and they had been put at the bottom of the vessel. He does not know whether there were any warlike arms or ammunition on board, or whether they were thrown overboard. He says he heard from a passenger, who was told by a sailor, that there were provisions concealed in the bottom of the
30 ship. He never heard of any arms being concealed, and he does not know whether there were any goods contraband of war.

39th. My personal opinion is that the vessel would have reached Porto Rico if she could have done so without danger, and I have no personal opinion about the cargo, but I say I have been told there was irregular merchandise in the bottom of the ship for Porto Rico.

40th. No; he knows nothing about that.

41st. Yes; on her former voyage she attempted and did enter San Juan Porto Rico, a port blockaded by the United States. I heard the port was blockaded on the 5th July; I was advised of it by telegram before leaving Port au Prince that San Juan was blockaded.

42nd. He does not know anything about that.

43rd. He declares he knows absolutely nothing about No. 43 and No. 43.

AUGUSTE JULIEN.

Sworn to before us and subscribed this first day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

31 United States of America, district of South Carolina.

THE UNITED STATES
v.
THE OLINDE RODRIGUES.

Deposition of GEORGE DARONDEAU, a witness produced, sworn, and examined in preparatorio, on the 5th August, 1898, at the city of Charleston, S. C., on the standing interrogatories established by the district court of the United States for the district of South Carolina, the said witness having been produced by the U. S. attorney in behalf of the captors of a certain ship or vessel called the "Olinde Rodrigues" and her cargo:

St. Nazaire, Loire Inferieure, I am not a married man, and I live, when I am at home, at a place called Nanterre, near Paris. I have lived there since 1875. I am a French citizen.

2nd. Yes; I was present.

3rd. 17th July, about 8 o'clock in the morning, we had just passed San Juan when I came on deck at a quarter of half past 7. When I saw with the glasses, I said to the doctor, "I see before us Arecibo," and he said, "That is all right." I am not a sailor, and I may take San Juan for Aricibo, or Aricibo for San Juan. And a quarter of an hour after, I was making out my bills of the ship—I was making out the bills for St. Thomas. I was obliged to give the number of tons, and cases, and the bills thereof—when the doctor rushed into my stateroom and said,
32 "There is an American cruiser which has just fired a shell in front of our ship," and I started out. We were brought into Charleston. Our ship had no commission to make prizes. When the "New Orleans" came by us, a boat was put out, and an officer came aboard—I don't know the names—and they asked for the papers of the steamer, and I was making out, as I said before, the receipt for the number of packages and passengers. I was at my table, and I brought him there to look at the papers, and after, when he had looked, he said he wanted the clearance papers. I didn't know what he meant, and then I said, "I know what you want," and I gave him all the papers of clearance and bills of lading from the Dominican authorities, duly stamped, and I said we were bound for St. Thomas, and the helmsman said, "Captain, that is all right; that is for St. Thomas." I don't know what remark the officer then made, but he signalled with a flag to the "New Orleans," and I suppose he received an answer from his captain, for he said, "I want to see the between decks." And the holds were opened, and he looked, and said, "That is all right." And he asked for a slip of paper, and wrote—I don't know if these are the exact words—"I find no contraband goods," and after, when he was sitting near me, and a seaman from the "New Orleans" (I was not able to understand him) said something to Mr. Russell, and Mr. Russell says to me, "The captain asks for me," and I said, "All right." About an hour after he comes back again and says to our Captain Pherivong, "I am ordered to take the steamer to Charleston," and he says, "Give me the papers." I then put the papers together, and brought them in the saloon before the captain. I translated
33 to the captain what the lieutenant said, and the captain protested, and said, "You are wrong; we are not running the blockade."

And he says, "I will write to your captain, and protest." And the lieutenant says, "All right; I will translate your protest." It was the duty of Mr. Russell; I understood that. The captain wrote his letter (I suppose in French), and in about 20 minutes Lieut. Russel brings a card to the captain, which said something like: "I acknowledge the receipt of your card, and it is my idea that you were running the blockade, and I wish you a good trip." I did not read the card then, but I saw it afterwards; I can't say the date.

4th. French colors, and we carry the flags for the countries where we are bound on our regular trips.

5th. No resistance was made by anyone. I did not hear any guns; I was in my stateroom and I was busy writing. The capture was made by the "New Orleans," a U. S. man-of-war. Yes, there was a three-masted vessel, he thinks a three-masted schooner, that was steering about. I am shortsighted; I can't measure the distance exactly; I suppose she was two miles off. Our vessel was a merchant ship and she belonged to the Compagnie Generale Transaltantic. The capturing ship was a ship of war of the United States.

6th. I suppose he had a commission; I don't know; and I don't know from whom. The capture was made by the "New Orleans." Our vessel has not yet been condemned.

7th. "Olinde Rodrigues," Maurice Pherivong, master, appointed
34 by the Compagnie Transatlantic, and at Havre, I think. I have known the vessel from my entrance in the company for 6 years, and the captain since about the 14th July of last year. The Transatlantic Co. delivered the ship to the captain, and the home of the master is Havre with his family. I don't know how long he has lived there nor where he was born. He is a Frenchman; of that I am sure.

8th. Net 1,675. The crew consisted of 107 and the same number was actually on board when the ship was captured. I suppose, very just, 94 French, 1 Swiss, and 22 coming from St. Thomas. They are journeymen, 85 from Havre and 22 from St. Thomas. Some have been on board 3 years and the others were taken from time to time.

9th. Yes; purser. I had no interest in the ship.

10th. 6 or 7 years, when I came on board was the first I knew her. She had two saluting guns on board and 107 in crew. I suppose she was built in England. She was called the "Olinde Rodrigues." Before 6 years ago I don't know her name.

11th. St. Thomas. The voyage begins at Havre on the 16th of every month, and it ends in Havre. She first took on general merchandise, and when she was captured she had tobacco in leaves, coffee, some bags of cocoa, wax, rum, and about 66 tons of logwood. It was put on board from the 6th or 7th of July to the 15th July, and no contraband goods on board.

12th. Yes; and all the usual ship papers. She left Havre on
35 the 16th April, Bordeaux 19th April, St. Thomas about the 2nd May, San Juan of Puerto Rico the day after, and Port au Platte, and from there to Cape Haytien and Port au Prince, and we had to wait there and repair the engines, and after that we went to St. Marc, and after to Gonaive, and from Gonaive we sailed directly to Port au Prince, and then Cape Haytien, and then Port au Platte and from Port

au Platte to San Juan, and from there to St. Thomas, and from St. Thomas to Havre. She carried at the time of capture coffee, tobacco, cocoa, rum, logwood, and a little quantity of merchandise of different kinds. We delivered such cargo in every port of our line. We went from Porto Plata 16th July at 6 a. m. and we took only about 2,700 bales of leaf tobacco. There were some parcels of goods for Havre and I suppose there were only two parcels of money before Port au Platte, and at Port au Platte we took two parcels, I supposed it to be Mexican silver for Manchester.

13th. General cargo, and about the same this trip as what she carried on the last voyage. It was put on in July, 1898—about 7,000 bags of coffee, about 400 bags of cocoa, about 4,000 bags of leaf tobacco, 12 bags of wax, and I suppose 8 cases of rum, and I suppose 30 miscellaneous parcels.

14th. The Transatlantic Co. owned the vessel; the bills of lading will show who owned the goods. I know they were the owners, because it is this company that pays me; I know it from that.

15th. I don't know about the bill of sale.

36 16th. I have just stated you can find the names of the owners on the bill of lading. All the tobacco is, I suppose, for Germany, and to my opinion the best part of the coffee is at option. I will say when we arrived in Havre we go to the dock and the docks take possession of the goods and hand the goods to the owners. All the cargo on board will be put sure in the port marked on the bills of lading.

17th. I don't remember the number; none of the bills were false; they are all of the same type—nothing false about them, and there were none different from those on board.

18th. All the bills of lading are in the hands of the prize master except this. When we were stopped by the "Yosemite" (the blockade was not announced by the United States); I don't know the name of the officer who came aboard; he notified us of the blockade, and the captain said, "We will not go in San Juan, because I don't want to get myself in the hands of the American cruisers." When we arrived at Port au Platte we said what had been told us by the "Yosemite" and said that we would not take on any passengers or merchandise for San Juan on the return; we arrived in Cape Haytien and there reported the same thing, and also at the French consulate at Port au Prince; the French minister was advised of this, and he added nothing to it. And after the return from Gonaive and St. Marc the captain said to the agent, in my presence, that it was not necessary to have any Spanish clearance papers, since we were not going there, and the postal matter—since this is a postal ship—the mail for San Juan would be sent to St. Thomas.

37 The consignees of the steamer returned the papers in a box, and they received those papers at the time of the departure from Port au Prince from the consignees of the boat at the time of sailing. I found in the box of papers one manifest of freight in ballast. As to the bills of health, that is not my matter, and I said to the captain, "We don't want it;" and he said, "All right, you can tear it," and I put it away in the corner; and in Cape Haytien it was the same thing absolutely. To my recollection, these clearance papers were given gratuitously; the captain told me we were not going to San Juan, and I did not care, and

put them in the office, because I had no need of them. The captain received at Cape Haytien a cable from the consignee in San Juan, Puerto Rico. I read it, saying: "Stop at San Juan; there are about 50 passengers to be taken." The captain called me and said: "What shall be done about this cable?" I answered: "That since we were advised of the blockade of Puerto Rico by the war ship, it was absolutely necessary not to stop." And, before me, the agent in Cape Haytien sent a cablegram, saying: "'Daim' will not stop at San Juan, the blockade being notified." On the receipt of this despatch I paid no more attention to these papers, and put them away in the corner. At Port au Platte I am appointed on board for the papers, and the Spanish clearance is valuable only from the last port, and the agent of the company came on board the morning of our arrival and he asked for the captain immediately; I was present. The captain told him that there was no Spanish clearance; there was no need of it, and it was not taken. The Spanish clearance is meant as follows: We take any bill of lading—I am

38 appointed for making it and in Spanish—I take any bill of lading and I put any particulars by cypher and in letter afterwards, and the weight and the contents in any particulars for the Spanish ports, and the transient merchandise is put in the gross. These clearance were not taken; the captain said to the agent it was not necessary, because we are not going to San Juan, being notified of the blockade. When we arrive in a port we put up a placard of the date of departure and the time of sailing and the destination, and it was put up by my personal order from the captain that we sailed for St. Thomas directly, and it was fixed up in the night of the 15th July, 6. I came aboard after seeing my telegraph friends, because I knew we were to start on the morning of the 16th, at 6 o'clock in the morning, the captain saying he did not want to fall into the hands of the American cruisers during the night. The night before our arrival in Charleston the doctor says to me, "I have a bill of health, Spanish account, from Cape Haytien and Port au Prince," and I told him I would speak to the captain and ask him what to do with these papers that I had found in assorting my papers—these papers in the pigeonholes. I told the captain that morning, and he told me that we had better destroy them, because we don't want them; that it is not our expedition, and that a true exposition is valuable only for the last port to the Spanish port. I came into the stateroom of the doctor—he was yet asleep—and I asked him for his bills of health from Cape Haytien and Port au Prince, and I took them with mine and the ballast of merchandise, and I tore it and put it in my wastebasket.

39 18th. We were passed San Juan. It was July 17th, 1898, 9 miles from San Juan, about; it was not a port of the United States, not yet; the vessel was not under charter party; she belonged to the company.

20th. The bills of lading, the passenger lists from any port, the log book and register and the act of propriety, inventory of the custom-house, clearance of French customs, all the French lists, and all concerning the passengers and freight—all that was given to Mr. Russell and sealed before me by the seal of the steamer, which is now in the possession of the prize master. I have already answered that.

21st. Yes; I knew the war existed; it was in the newspapers, and he knew the port was blockaded; on the outward trip to Port au Prince the

captain told them that, when he had received the news from the "Yosemite." He had notice of the Cuban coast at Havre, but not of the Porto Rican coast; we had no notice of it even in the newspapers; we left Havre on the 16th June at 6 a. m., and at that time I suppose the blockade was not notified. At St. Thomas we did not know anything; the captain asked before me; he asked the French consul through our consignee if any danger in going to San Juan; the cable I don't remember having seen, and the answer was made from the sayings of the captain that the French consul says, "I am not officially notified of the blockade, and there is no danger for you to come in." At St. Thomas we asked the first thing of the pilot-boat men and they did not know anything,
40 and he said even that the cable was cut off and they were speaking that the blockade might exist at any one moment or another; they knew that already; knew it in France; and when we arrived in San Juan I, myself, went to the French consul and he said the blockade is not notified to us officially.

22nd. On the return trip from Port au Platte we knew of the blockade, because the officer from the "Yosemite" had warned our commander himself.

23rd. Yes; and I showed him the bills of lading and the list of the passengers, and all of the papers of the steamer, excepting the papers about which I have spoken, because I was not remembering that.

24th. We went in San Juan about the 4th or 5th of July; we never attempted to enter secret*ed*ly.

25th. Never before to my knowledge.

26th. I am very annoyed because I am not free; we are quite prisoners; I have not received anything.

27th. It is put on the bill of lading, insured by so and so.

28th. The steamer, if she arrives at Havre, will be handed to the Compagnie Transatlantic; it is the matter of the consignees.

29th. In the countries of production.

30th. All was taken from barges.

41 31st. There are none.

32nd. I have already answered that, to the prize master.

33rd. No.

34th. Yes; none were secreted. The passenger list will show their names. They were French, Dominicans, and I suppose there are two Spaniards; I don't know their professions or occupations; they had no commissions; they are private persons. They embarked from Gonaive, Port au Prince, Cape Haytien, and Port au Platte at the time the vessel was due at those places; they were for St. Thomas, Guadaloupe, and for Havre, and one for Marseilles. I know no soldiers or mariners were secreted on *bo*board, and I know no American citizen was on board.

35th. All the papers are quite true, and there is nothing to affect their credit; they were obtained from the consuls, and were for this voyage only; they signed them themselves; the papers were for the duration of this trip. The steamer does not pay; the consignee has to pay if there is anything to be paid as fee; they have not been renewed. The vessel was in the country where the passports were granted. I suppose the passengers got a true and fair passport. I have signed the receipts for the provisions, but not the bills of lading; I have no right to sign them.

36th. St. Thomas. Her course was altered to steer towards the "New Orleans," I heard; to prove our good faith, we steered directly for the "New Orleans." We were always destined for St. Thomas
42 according to the sayings of the captain. I was absolutely persuaded that we were on our trip to St Thomas; we were going on the regular course for St. Thomas. I suppose we were 5 or 6 miles from St. Thomas, and our course was not altered, I believe—but I am not a chartsman.

37th. The steamer is always the property of the company.

38th. Signal cannon, they are used by the Postal Company; there were also 5 or 6 revolvers and a dozen swords and signal rockets and a kind of rocket making a great noise. There were no guns, weapons, warlike arms of any description, nor ammunition, fixed or unfixed, or balls, shells, hand grenades, flints, percussion caps. There were no belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or any sort of warlike or naval stores. I have said, to my knowledge, there was nothing, and no warlike implements were concealed or thrown overboard.

39th. I am sure we were for St. Thomas, and Havre afterwards; I am quite sure.

40th. No; she never sailed under the convoy of any man of war. From my recollection we don't get any instructions to resist, but to open and give up anything asked for by the U. S. man-of-war.

41st. We went in San Juan the 4th or 5th of July, and we heard of the blockade on the 6th or 7th by the "Yosemite;" the date is written on the log book.

42nd. Never.

43 43rd. No; she has never sailed in company with any armed vessel in cruising against the persons or property of the citizens of the United States.

GEORGE DARONDEAU, *Purser.*

Sworn to before us and subscribed this 5th day of August, 1898.

JOHN IRVIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

44 United States of America, district of South Carolina.

THE UNITED STATES
vs.
THE "OLINDE RODRIGUES."

Deposition of ROBERT RAAB, a witness produced, sworn, and examined in preparatorio on the standing interrogatories established by the district court of the United States for the district of South Carolina, at Charleston, 4th August, 1898, in behalf of the captors of a certain ship or vessel called the "Olinde Rodrigues" and her cargo.

1st. Alsace, Haut Rhin, and lived there 15 years. He is a citizen of France, and now lives at Havre, and has lived there since he left Alsace, in 1884. He is not a citizen of the United States. He is a married man, and his family live at Havre.

2nd. He was present.

3rd. 10 miles from San Juan, Porto Rico. He does not think the vessel had any commission to make prizes, but he supposes the captain of the vessel knew his business. The reason he thinks for the seizure was that the Americans thought they were trying to enter San Juan. He supposes that is the reason.

4th. The French flag and the flag of the company; that is all.

5th. They made no resistance. They stopped as soon as they were taken. He says he heard of one cannons being fired, but he did
45 not hear it. He was working. He was the pastry cook. From what he hears, it was fired by the "New Orleans." The "New Orleans" made the capture. There was one sailing vessel in sight, which had been seized by the Americans, but had been released. The sailing boat was an English boat. Our vessel was a passenger and postal steamer, and belonged to the Compagnie Generale Transatlantic. The capturing vessel was a warship of the U. S.

6th. He does not know. The vessel was seized, but not condemned, as far as he knows.

7th. The "Olinde Rodrigues;" and as for the captain's name, he never could remember it. He supposes he was appointed by the Transatlantic Company, and, he thinks, in France. He has known the vessel about 7 years, and the captain, present captain, 2 years. He does not know when the captain took possession or who delivered the boat to him. He knows he lives in Havre, but not his address. He does not know how long he has lived there, nor where he was born, nor of what country he is a subject.

8th. He does not remember the tonnage; nor the number of the crew, but it was the same number as before they were seized, *au* and nearly all were Brittons, excepting the servants, waiters, etc. All the white sailors got on at the same port and time. The blacks were taken aboard at St. Thomas to make the voyage of the coast and return to St. Thomas. The company engages the men, the white at Havre and the blacks at St. Thomas.

9th. I was pastry cook on board, and had no interest in the *shp* ship or cargo—absolutely none. He says he thinks the officers always
46 have something above their wages—that is what he has always heard—some interest in the cargo.

10th. About 7 years ago and he saw her the first time in Havre; he knew her in 1892. She had two little bronze guns on board, used for announcing their arrival and departure, for salutes. The pers*in'a*l of the ship was complete, the same number as they had on board at Port au Platte. There was no engagement. He has always heard the "Olinde Rodrigues" was a vessel bought from the Germans; he does not know where she was built or her former name.

11th. Havre to Paulliac, San Thomas, San Juan, Porto Rico, Port au Platte, Cape Haytien, Port au Prince, St. Marc, and Gonaives. On the return, Gonaves, Port au Prince, Cape Haytien, Port au Platte, and they were on their way to San Juan, Porto Rico. Our voyage began at Havre and ended at Havre. He knows there was rice on board and other goods; he does not know they had tobacco and some bales of cotton and other things, coffee which they took at Cape Haytien; they also had logwood on board; they were put on board this year since the 2nd July

until the 17th July, he does not know the dates, or whether she had any contraband goods on board.

12th. He does not know if she had any passports or sea-briefs. Havre to Paulliac, St. Thomas, San Juan, Port au Platte, Cape Haytien, Port au Prince, St. Marc, Gonaives; then Port au Prince, Cape Haytien, Port au Platte. The voyage began at Havre and ended at Havre. I have stated what kind of cargo she carried so far as I know; that cargo was delivered, some at Port au Prince and St. Thomas; but as regards
47 the merchandise he does not know what it was. They did not deliver any cargo at San Juan; they only took on board at San Juan. He thinks they must have put some off in the other ports, but he does not know. He does not occupy himself about that; he is about his business, and knows nothing about that. They left Port au Platte on the 16th July, at 6 o'clock in the morning; that was the last clearing port.

13th. He has already stated the kinds of merchandise on board at the time of the capture, to the best of his knowledge. He knows nothing about the cargo, and very little about the merchandise of each kind.

14th. The owners of the vessel are the Transatlantic Co., but he does not know the owners of the cargo. He knows the vessel belongs to the company because she carried the flag of the Transatlantic Co.

15th. He does not know about any bill of sale, nor whether any engagement was entered into concerning the purchase further than appears on the bill of sale.

16th. The cargo was put on board from the beginning of June until the time of seizure. The present cargo was put aboard from the coast of Hayti and Port au Platte; and he says he thinks they also got some goods on from the boat alongside of them at St. Thomas. He does not know the names of the laders or owners, or from what country they are. There is only one passenger he knows who is the owner of some coffee and logwood. He does not know the name of the passenger; he
48 thinks he is a Frenchman, but he does not know where he resides; he embarked at Port au Prince; he is not quite sure, but he thinks so. He does not know anything about the goods, except that this passenger he understands is the owner of some.

17th. He does not know about any bill of lading nor whether any were false or colorable.

18th. I have not in my possession and know nothing about any writings which may have been on board.

19th. He does not know the latitude or longitude. The vessel was seized the 17th July, 1898, between 8 and 9 in the morning. We were near Porto Rico; about 10 miles from there; about 10 miles from land. He does not know whether any charter party was on board, and has none in his possession.

20th. He does not know what papers, letters, or writings the vessel had on board when she left her last port—Port au Platte—and does not know whether any were destroyed, burnt, or thrown overboard, and never saw any concealed.

21st. Yes; he knew that war existed with the United States, and he says he knew before he left Havre that everything was blockaded. He does not know whether the commander knew it. He knew it. He

knew it in Havre from the newspapers. None of the officers on board the ship spoke to him about the blockade.

22nd. He supposes it was since it was in the newspapers in
49 France. He does not know whether the captain had notice or warning of the blockade at the time she entered the port of San Juan. He never heard of any endorsement on the ship's papers of the existing blockade before she entered nor before she was captured.

23rd. He says all he knows is that the officers from the first vessel, the "Yosemite," came on board. The captain went with them into the saloon of the ship, but he did not know anything that had been done there.

24th. He does not know for certain. He can not tell justly. He says he heard from the passengers and among the crew they were trying to enter into San Juan, Porto Rico. He says that is the only port in Porto Rico they usually go to. He learned it first at Port au Platte. They said nothing of having heard from any of the officers or captain. He heard they should not go into Porto Rico, and when they were going out of San Juan the officers of the American man-of-war told them they must not enter San Juan.

25th. This is the first time since he has known her that she has been seized as a prize.

26th. He says he does not know. All he knows he heard that they would not be paid after the eighth of this month, but no one has promised him anything nor any satisfaction for any loss he may have sustained. They generally leave for six weeks, and are paid fifteen days in advance.

27th. He has always heard the goods of the vessel are insured. He does not know about the vessel.

28th. He does does not know. He thinks they would become
50 the property of the owners.

29th. They are produced at Port au Platte and Hayti.

30th. The boat is always away from the dock, and the cargo is put on by barges at all the ports except Havre and Paulliac. He does not know the name of the dock. They are only called the dock. He thinks the docks belong to the Government.

31st. He does not know whether there are in any country any letters or papers other than those on board the vessel, and he does not know their contents.

32nd. No papers were taken away, so far as he knows.

33rd. No cargo was broken since they left the last clearing port.

34th. Yes, they had passengers; none were secreted. He does not know the names of the passengers. They are from Hayti, France, Gaudaloupe, Martinique, and some Spaniards. He does not know their professions or occupations, and he does not know whether they had any commission. Three-quarters of the passengers were destined to Martinique. They would stop at St. Thomas in order to go on some other ship to Martinique. They were taken aboard at Port au Prince, Cape Haytien, and Port au Platte. There were some blacks at Gonaives. There is one first-class passenger I have already mentioned who has some interest in the cargo. There were no officers, soldiers, or mariners secreted on board, nor any United States citizens on board.

35th. He does not know whether the papers were true or false.
51 He knows of no matter or circumstances to effect their credit nor from whom they were obtained, if there were any, or whether obtained for this vessel only, or upon the oath and affirmation of any person. He does not know how long they are to last, nor whether any fee was to be paid or any renewal, or whether the same has been renewed or the fees paid, or whether the vessel was in the port where such papers were granted. He does not know whether any person on board had any passports; does not know anything about any letters or papers of any description, which are in the United States or anywhere else, concerning the vessel, nor in whose possession such are, if there are any, or whether they differ from any papers on the ship. He has not written or signed any papers concerning the vessel or cargo.

36th. Following the land line of Porto Rico. They were too far away. He cannot tell what port. He saw no change in her course. He says, from what he hears, they were to go directly to St. Thomas. The course must have been changed, as they were in front of Porto Rico. The only way he accounts for that is that they must have stopped when the American ship fired, and the American ship was nearer to them than they were to the shore. He says they were going directly to St. Thomas. He says they could not see the land, and he thinks it would have taken six hours' travelling to go to St. Thomas. The course was never altered after leaving Port au Platte so as to go into San Juan.

37th. He does not know anything about the sale or transfer of the vessel whatever.

38th. Two little cannon have always been on the boat. He does not know why they were on the boat; they have always been there
52 since the company had the boat. They were only used for saluting. There were no guns, weapons, warlike arms or armament of any name or description on board, nor parts of arms unfinished, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand grenades, flints, percussion caps, or military equipments. There were no belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or any sort of warlike or naval stores. None of these things were thrown overboard to prevent suspicion at the time of capture, nor concealed on board under the name of merchandise. He never heard of any placard or law forbidding the exportation of these things by private persons without license.

39th. He believes the destination of the vessel was St. Thomas and the ship belonged to the company.

40th. He never sailed under a convoy of any armed vessel or vessels on this or former voyages, and he had no instructions for avoiding or resisting capture, or for destroying, concealing, or refusing to deliver up the vessel's documents or papers.

41st. The first time they entered San Juan he knew it to be blockaded. He had heard it from the newspapers at Havre before leaving. He heard it also at St. Thomas. They were notified that San Juan, Porto Rico, was blockaded, and in spite of that knowledge they entered San Juan. No one stopped them. At San Juan they naturally heard the news from the Spaniards. They only received cargo there and unloaded none. He says the officers from the "Yosemite" came on board. He

heard them speaking, but from a distance, and he understood nothing. They went directly to Port au Platte after being warned off.

53 42nd. No, his vessel had no authority to cruise against the property or persons of the citizens of the United States. They had no commission or license.

43rd. He does not know whether his vessel at any time sailed or acted in company or concert with any other armed vessel in cruising against any persons or property of the citizens of the United States.

ROBERT RAAB.

Sworn to before us and subscribed this first day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

54 The United States of America, district of South Carolina.

THE UNITED STATES
vs.
THE OLINDE RODRIGUES.

Deposition of EMIL GIRNY, a witness produced, sworn, and examined in preparatorio on the fourth day of August, A. D. 1898, at the city of Charleston, South Carolina, on the standing interrogatories established by the district court of the United States for the district of South Carolina: the said witness having been produced for the purpose of such examination by the United States attorney in behalf of the captors of a certain ship or vessel called "Olinde Rodrigues" and her cargo.

1st. Alsace, Hagenheim, canton du Huningue, Haut Rhin. He lived ten years in his own birthplace, and he lives at present at Havre, and has lived there nineteen years. He is a Frenchman and owes allegiance to France. He is not a United States citizen. He is a married man and has a family, and his family lives at Havre.

2nd. He was present.

3rd. He is head steward on board, and he couldn't tell the distance, for he was at his work at the time. They came and notified him that an American war vessel was in view, so he came on deck and looked at the boat. The vessel captured was brought into Charleston. No, his vessel had no commission to make prizes. She is a passenger and

55 postal ship. He says he thinks the American war ship made a mistake and took them for pirates or vessels trying to make prizes. The American sailors said the reason they seized her she was attempting to enter San Juan.

4th. French. On board of all ships they have all the flags for every country where they may go. These flags are for the purpose of courtesy.

5th. None; one solid shot was fired by the "New Orleans." He didn't see, but he heard from the men on the deck that they saw the shot fall two hundred or three hundred metres off. The capture was made by the "New Orleans." A little sailing vessel was in view. His vessel is a postal and passenger vessel, and carries freight and passengers, and is not a war ship like the "New Orleans."

6th. If she had not the right, they took it. She carried the United States flag, and her name was the "New Orleans." His vessel has not been condemned.

7th. "Olinde Rodrigues," Captain Phervong. The Campagnie Transatlantic appointed him captain of the vessel, and he thinks he received his appointment at Havre. He has known the ship thirteen years and the captain 6 years, and he thinks the captain took possession in the month of October, 1895, at St. Naziere. He believes the ship was delivered to him by the former captain, who was called Bouquillard, at Havre. The home of the master is at Havre. He thinks he has lived there about ten years; he does not know exactly. He does not know where the captain was born. He is a Frenchman.

8th. He thinks about 3,000 tons. The crew consisted of
56 ninety-two whites at Havre, twenty-two blacks at St. Thomas; from the captain to the cabin boy, ninety-two in all. All were French except the blacks, who were Danish. The blacks were simply taken on at St. Thomas and returned to St. Thomas. The whole crew is engaged by the company, the white crew at Havre, and the blacks were taken on at St. Thomas by the agent of the company.

9th. Chief steward. He had no interest in the ship or cargo, and he can add to that that none of the officers had any interest in the ship or cargo, for even if they had good conduct in this company and they were found to have any interest in the merchandise they would be immediately discharged without any recourse to the company whatever; that is a rule of the company.

10th. Thirteen years; and he saw the vessel at Havre thirteen years ago. We had two little guns on board. The same number of men as I have already mentioned. There was no engagement. She was built in Grenock, but the company bought her from the Germans. Her name is "Olinde Rodrigues," and has been so called since she was bought from the Germans. He does not know her former name.

11th. Havre, Bordeaux, St. Thomas, San Juan, Port au Platte, Cape Haytien, Port au Prince, St. Marc, Gonaive. On the return, Port au Prince, Cape Haytien, Port au Platte, and from Port au Platte to the New Orleans. He was bound for St. Thomas. He would like to state that his position is at the ladder, and he has to receive the tickets of the passengers as they come aboard, and he had been given special
57 instructions by the captain and purser not to receive any tickets for Porto Rico on the voyage from Port au Platte. The voyage began at Havre and ended at Havre. They had different merchandise from Havre. They took on various kinds, and at Bordeaux wine and brandy for Hayti. We had tobacco, coffee, and some barrels of rum, but the principal cargo is coffee and tobacco. The same was put on board on the 13th and 14th at Port au Prince, on the 10th at St. Marc, on the 11th at Gonaive, and the 12th and 13th at Port au Prince. He could not tell; they didn't stay long enough at San Juan; he does not know what they took there. They had on board no contraband goods of war.

12th. Every passenger has his passport, and the vessel has the roll of the men and the usual ship's papers; but Mr. Russell has them. She sailed from Havre to Bordeaux, St. Thomas, San Juan, Port au Platte, Cape Haytien, Port au Prince, St. Marc, Gonaive; on the return, Port au Prince, Cape Haytien, Port au Platte, and then we were going to St. Thomas. The voyage began at Havre and ended at Havre. He did

deliver some cargo at Bordeaux, five or six hundred barrels of water for the boilers. At St. Thomas we delivered different merchandise; at San Juan he does not know what; they had a number of passengers getting on board there. At Port au Prince they delivered wine and different things; at Cape Haytien a variety of goods, clothing, etc.; at Port au Prince the same things, and at Gonaive the same thing. In returning from Gonaive to Port au Prince he took on coffee. At Cape Haytien he took coffee. He says they take their merchandise on as they go along both ways. As they are a postal boat, they cannot stay long at any one place. At Port au Prince they took coffee, at Cape Haytien
58 coffee, and Port au Platte tobacco. That almost filled the ship. There was very little room left. We left Port au Platte about half past five in the morning, on the 17th of July.

13th. I have already stated very fully what she had on board at her first setting sail and also what was taken on board, and 'no' nothing more. He has already stated the time when the cargo was taken on board, and has told the different kinds of cargo.

14th. The Trans-Atlantique Compagnie. He says he knows they were the owners, because they have seventy-two vessels, and there is only one Compagnie Trans-Atlantique. He does not know who the goods on board belonged to; the company is French.

15th. He does not know anything about the bill of sale. He thinks it was in 1885 or 1886.

16th. He has already stated he does not know the names of the owners of the cargo nor what country they are from. The goods were to be delivered to different persons; he does not know for whose real benefit, but supposes they would belong to the people mentioned in the manifest. The bills of lading will show exactly the quantity. He believes the goods, if restored, will belong to the persons mentioned in the manifest.

17th. He does not know how many bills of lading were signed. He does not think any bills of lading were false or colorable, or in any way different from those on the vessel when she was taken.

18th. He has nothing in his possession to show his interest in the boat, and he knows nothing about the papers. All the papers are in the hands of the prize master.

59 19th. He does not know the latitude or longitude. It was on the 17th July, 1898, about six o'clock in the morning; he was off the coast of Porto Rico, and the nearest port was San Juan, and it was not a port of the United States. The vessel had no charter party. She belonged to the Trans-Atlantique Compagnie.

20th. They had mail matter and the usual ship's papers, which were delivered to the prize master. None were burnt or destroyed that he saw, and the best proof of their not being destroyed is that Mr. Russell, as soon as he came on board, took charge of them.

21st. No; he didn't know when he entered San Juan that the port was in a state of blockade. He heard when at Porto Rico that they would soon be blockaded. He didn't know before leaving Havre it was blockaded, and he didn't see it in the newspapers. They left Havre on the 16th of June, and he never heard it at Bordeaux, because if they had heard it they would not have gone there; nor did they hear of it at St. Thomas. He never heard the captain say it was blockaded. He says

they didn't occupy themselves about San Juan, as they had not heard it was blockaded. They went to San Juan as they would to any other place. He never heard in San Juan that the port was blockaded and does not know whether the captain made any inquiries. The first time he heard it was from the American man-of-war going out of San Juan. He does not remember the name of the boat, but two officers came on board and asked for the commander, and if he knew that San Juan was blockaded, and the captain answered no; and then the American captain signified to their captain that San Juan was blockaded. They
60 were then five or six miles from San Juan when the American ship boarded her. He says the officers told him the port was blockaded, and the captain then submitted his log so that he could write in it that the port was blockaded.

22nd. No, he did not know it at the time. He does not know whether the captain or owners knew that the blockade existed on the voyage from Havre. I don't know whether, at the time of entering San Juan, there had been any endorsements on the register or ship's papers of the existing blockade of such a port.

23rd. The papers had been examined by the officers of the "Yosemite," when coming out of San Juan, and then endorsed by the officers.

24th. He does not know that she ever attempted to enter a port that was blockaded. At the time of the capture they were going direct to St. Thomas.

25th. Never.

26th. Yes, pecuniarily, he says; they were to be forty-five days on this voyage and he had family affairs to arrange, and this will prevent him from attending to them. He says he does not know exactly what the loss will be, but he has not received any satisfaction or promise of indemnity for any loss he may have sustained.

27th. He could not tell.

28th. He believed the goods would have been the property of those to whom they were sent.

29th. In Hayti, San Domingo. He does not know whether any money or valuables were on board.

61 30th. By barges at all the ports except Havre and Bordeaux.

31st. He does not think there are any papers excepting those delivered to the prize master.

32nd. Nothing at all. The prize master has gotten all the papers.

33rd. No.

34th. Yes. None were secreted; to the contrary, they were all on deck. The principal part of the passengers were French. He can give the names of a few of the first-class passengers. The passenger list will show: Port au Prince, 13th; Cape Haytien, 14th; Port au Platte, 15th. Nearly all the first-class passengers were for Havre, and the rest for Gaudaloupe, Martinique and St. Thomas. He does not think they had any interest in the cargo or vessel. No officers or soldiers were secreted and they were no United States citizens on board.

35th. All the papers were true and fair, and he knows of nothing to effect their credit. The papers are all signed by the consuls, and they were obtained for this vessel only. He does not know on whose oath and affirmation. He does not know how long they were to last. He does not know if any fees were paid, nor if any of the passports had been

renewed. He does not know whether any person had letter of safe conduct. He has not signed any paper concerning the vessel or cargo.

36th. To St. Thomas. Her course was not altered on the appearance of the war ship. It was always the same, excepting when the cannon was fired. Then they turned towards the deck. He was not on deck when the cannon was fired. He does not know whether they
62 turned before or after the gun was fired. They were on their route for St. Thomas. He can not say whether they had passed San Juan; he was not on deck. They came and told him the boat was stopped by the "New Orleans," and he says when he came on deck the "New Orleans" was about half a mile from it. He says he thinks from the distance they must have already passed San Juan. They were to have arrived at St. Thomas about eleven o'clock, and it was then six o'clock. His course was not altered after leaving Port au Platte. They followed the usual route.

37th. He does not know, he knows nothing about the sale or whether the sum was a fair or true equivalent. He believes that the sale was a true sale, and he believes that the vessel, if restored, will belong to the owners and none others.

38th. We had two little guns for the purpose of signalling. There were no guns, weapons, warlike arms or armament on board, nor any parts thereof, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand-grenades, flints, percussion caps, or military equipments. There were no belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or any sort of warlike or naval stores. None were thrown overboard to prevent suspicion at the time of capture, nor were any of these warlike stores concealed on board under the name of merchandise. He has not heard of any ordinance or law existing in such country forbidding the exportation of the same by private persons without license.

39th. St. Thomas. He verily believes and he is certain that
63 that was her port of destination, and he believes the property on board will belong to the owners stated in the ship's papers.

40th. He never sailed under the convoy of any ship of war or armed vessel, and he received no instructions for resisting or endeavoring to avoid escape from capture or for destroying, concealing, or refusing to deliver up the vessel's papers.

41st. She never sailed under the convoy of an armed ship. From the officers of the "Yosemite" he first heard that San Juan was blockaded. He heard no conversation at the time and the vessel continued on her course for Port au Platte.

42nd. No; she had no commission or letter of authority to cruise against the person or property of the citizens of the United States and to make prizes thereof.

43. She never acted or sailed in company or concert with any armed vessel in cruising against, pursuing, or seizing as prize, any persons, vessels, or property of the citizens of the United States.

E. GIRNY.

Sworn to before us and subscribed this 4th day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

64 United States of America, district of South Carolina.

THE UNITED STATES
vs.
THE OLINDE RODRIGUES.

Deposition of LANDGREN PHILLIPS, a witness produced, sworn, and examined in preparatorio, on the 3rd August, 1898, at Charleston, S. C., on the standing interrogatories established by the district court of the United States for the district of South Carolina, the said witness having been produced for the purpose of such examination by the U. S. attorney in behalf of the captors of a certain ship or vessel called the "Olinde Rodrigues" and her cargo.

1st. St. Servan, Isle de Valaine, France. I am a citizen of France and owe allegiance to France; I am a Frenchman, and I am a married man, and my family live at Dinan, d'Isle de Vilaine.

2nd. Yes.

3rd. At 9 miles from San Juan, 17th July, 1898, and they were brought into Charleston; they had no commission to make prizes. The seizure was illegal and arbitrary, and they gave him no reasons.

4th. French; they had all the colors required for the postal service; no others.

5th. No resistance was made; the "New Orleans" fired one gun, and the capture was made by the "New Orleans;" one little sailing vessel was in sight, but it was several hours after the seizure. The
65 "Olinde Rodrigues" was a passenger and postal ship belonging to the Compagnie General Trans-Atlantic. The "New Orleans" was a man-of-war, he does not know of what force; she carried a good many guns, and carried a United States flag.

6th. They had no right to capture us; they had a right to stop and examine our papers, but they had no right to bring us to Charleston. The "New Orleans" captured us. He does not know whether his vessel has ever been siezed as a prize before.

7th. "Olinde Rodrigues," and her master was Maurice Pherivong, who was appointed to the command of the ship by the Trans-Atlantic Co., at Paris. The head office of the company is at Paris. The captain I have known for 16 years, and the vessel for 16 years. The "Olind' Rodrigues" sails from Havre. He does not know when the captain took possession. The Compagnie Generale Trans-Atlantic delivered the vessel to the captain; he does not know the name of the individual. The captain lives at Havre; he does not know how long he has lived there, and he does not know where the captain was born; he is a Frenchman, because the first obligation of the company is that he should be a Frenchman.

8th. About 1,675 tons burden. There were on board 85 white French sailors, 22 blacks from St. Thomas, taken to work as stevedores; they all came aboard; he can't say at the same time; they were all shipped at Havre. The Trans-Atlantic Co. engaged the men, except these black laborers, who were taken on at St. Thomas.

9th. Yes; he was the second captain; he had no interest in the ship or cargo. I am not rich enough to be a stockholder in the company; I am too poor, and had no interest in the cargo.

66 10th. I have known the vessel 16 years and saw her first at Havre 16 years ago. She carried two guns for postal and distress signals. The postal service compelled us to carry them; that was a postal regulation. I don't know how many persons were on board; you have the list; I believe 144 all told. He does not know where the ship was built; it ought to be marked on the ship; he believes it was Grenock, Caird & Co., 1873. She was named the "Olinde Rodrigues;" he does not know how long she has been so called; he does not know whether she has had any other name; he knows she was a German ship, but he does not know the name.

11th. St. Thomas. The voyage began at Havre and was to have terminated at Havre. She had on general cargo on leaving Havre clothing, toys, potatoes, wines, cognac; they left Havre on the 16th, and Bordeaux on the 19th. They loaded at Bordeaux on the 18th and part of the 19th of June; she had on board no contraband goods of war whatever.

12th. All their papers were regular and in form; that is the affair of the purser, and he receives all of these papers. During her last voyage she sailed from Havre, Bordeaux, St. Thomas, San Juan, Port au Platte, Cape Haytien, Port au Prince, St. Marc, Gonaives, and on the return Gonaives, Port au Prince, Cape Haytien, Port au Platte, St. Thomas; we were going to St. Thomas. Her voyage began at Havre and ended at Havre. He delivered cargo in all the ports he has mentioned; we took in cargo at some of the ports and some we did not. At Havre, Bordeaux, and St. Thomas; at San Juan he thinks they turned out
67 about 10 packages, and we took on coffee and tobacco. The prize master has the papers; he can tell you how much; it is still on board and has not been delivered. At Port au Platte we delivered merchandise, took on nothing there; at Cape Haytien we delivered the same things there, and we took on coffee, and at Port au Prince we delivered merchandise and we took on coffee; at St. Marque we delivered the same things and took on coffee and cotton seed; at Gonaive we delivered the same things and took on coffee. And then at Port au Prince, the second time, they unloaded nothing and took coffee; Cape Haytien, delivered nothing and took on coffee and logwood and 8 casks rum; at Port au Platte he delivered nothing and took on tobacco. His ship was full. He had three coffers with valuables in them—two from Port au Platte for Manchester, England, and the third for Paris from St. Marque. They are essentially a postal vessel; therefore they take it at every station and leave on fixed days; he is not in charge of the postal department. The first lieutenant is under the authority of the captain; his name, I think, is Paleotti. We left Port au Platte on the 16th July, 6 a. m. On returning I arrived on the 15th at daylight, and we might have left on the 15th in the evening; but their object in not leaving in the evening was the captain preferred to wait until the following morning, in order that they might go through the war ships at daylight and not under the dark of night.

13th. General cargo at her first setting out; when she was taken
68 she had on board coffee, tobacco, cotton seed, beeswax, and logwood; at Havre they started to load the vessel on the 15th of June and the other cargo was loaded in July, 1898; the greater part of the cargo was coffee and tobacco.

14th. The vessel belonged to the Trans-Atlantic Co., and he does not know the owners of the merchandise; the owners of the vessel are French.

15th. He does not know anything about the bills of sale.

16th. He has told you already, and he does not know anything more than he has stated; he does not know the names of the owners, and knows still less of those who were to receive them; does not know what country they were of. All the merchandise goes into the docks at Havre and he does not know what becomes of them; the goods were to be delivered at Havre, he supposes, for the benefit of those who buy them; he does not know anything about the goods when they are on the dock; the dock company delivers them to whoever the proprietors are; he does not know anything about them.

17th. He does not know how many bills of lading were signed. As you have the papers, you know better than me; all the papers were real and none were false, and none were signed different from those on board the boat, and there were no other papers.

18th. No; he has none in his possession, and there were none besides those delivered up to the prize master; the only papers on board were seized by the officers of the "New Orleans."

19th. The latitude was 18′ 38″ north, longitude 68° 22′ 30″
69 west, on the 17th July, 1898, at about 8:15 a. m., and they were 9 miles from San Juan after having passed the port of San Juan and gone 4 miles east of it. He does know that it was a port of the United States. There was no charter party, and all the papers are in the possession of the prize master; the "Olinde Rodrigues" belonged to the company, and there was no charter party.

20th. Clearing papers direct from Port au Platte to St. Thomas and all the other customary ship's papers, which were given to the prize master; none were destroyed or concealed as far as he knows.

21st. I knew San Juan was blockaded at the time of the capture. On my return trip from St. Thomas the captain telegraph' the French consul to know whether San Juan was blockaded; the French consul replied that notice of the blockade had not been given him officially and that the boat could enter the port of San Juan, and when they entered he saw the French consul, who told them the blockade had not been officially given them; but when we left San Juan the officers from the U. S. S. "Yosemite" came on board and examined our papers, and notified us officially that the blockade existed and we must not return to San Juan, as it would be blockaded by 6 war ships; those were the orders of the officers; this was the first time he ever heard of it; he never heard of it before. The captain telegraphed because being 15 days at sea he telegraphed to his consul to know the condition of affairs.

70 22nd. The first time he entered San Juan he had no knowledge of the blockade; the first time they only saw the ship at a great distance; they could only see the mast and could not make out the flag. No notice had been given, so far as he knew, to the captain as to the blockade on his first entrance into San Juan, but on his coming out he had notice given him by the officers of the "Yosemite." The officer of the "Yosemite" wrote it on his journal du mer; they were at that time 8 to 10 miles from San Juan.

23rd. On leaving San Juan the officers of the "Yosemite" examined all her papers and found them all in good condition, and at the time of the capture the officers of the "New Orleans" took all their papers, and on leaving the register was not endorsed, but the log was endorsed. I have stated all that I know on this subject.

24th. He never did attempt to enter or sail from it after notification.

25th. Never has been seized and condemned as a prize.

26th. Yes, I have suffered great loss, because I have lost one or two voyages, and the great anxiety caused my family by my illegal arrest; and having to be always under surveyance by armed men, my health has been injured by the fatigues which I have suffered form the arrest. I will claim damage and interest through the French consul and his excellence the ambassador at Washington. He says he has as yet received no indemnity—that he is a prisoner.

71 27th. He does not know.

28th. The merchandise, upon their arrival, is delivered on the docks, and he knows nothing else about them; the docks take charge of them.

29th. He has stated all he knows about the cargo of the vessel.

30th. All of it by barges or lighters, except at Havre and Bordeaux, where they had wharves; he does not know whose wharves they are; they belonged to the company who has charge of those things at the respective ports.

31st. He does not know; so far as he knows, there are none.

32nd. None; the officers of the "New Orleans" took all.

33rd. Nothing has been taken out since the seizure; they have everything on board that they loaded at the last place, Port au Platte.

34th. There were 37 passengers, and none of them were secreted; he does not know the names of all the passengers; the passenger list will show. The passengers are French and Dominicans, Haytiens, etc., and they were bound, some for France, some for St. Thomas, and some for Gaudaloupe; they were taken on board at Port au Prince, Cape Haytien, Port au Platte; but all that is the purser's business. He does not know whether any of the passengers had any interest or concern in the vessel or cargo, but he thinks not. There were no soldiers or mariners

72 secreted on board, and no Americans on board or secreted.

35th. All my papers were regular and without any fraud. They were regular in form, and they were to go direct to St. Thomas, and all true and fair. They were obtained from the consuls and could only be used on the "Olinde Rodriques" and no other vessel. The consuls gave them to the agent of the boat, and the agent gave them to the purser. On this particular passage he does not know whether any fee was paid, but he supposes that the consuls got their fees. The ship was in the port where the passports were delivered to us. He does not know whether the passengers had any letters of safe-conduct; the purser knows that. He says he has signed a protest addressed to the ambassador at Washington, but will not disclose its contents until later, when he has a lawyer for his defence. He delivered them up to the marshal under orders received from Washington.

36th. Upon a direct route to St. Thomas. No, the course was not altered; it was always the same. One or two degrees they may have

gone out of the way to correct the course against the current. The course was always the same; always from Port au Platte direct to St. Thomas. They were about 7 or 8 hours' trip from St. Thomas when stopped. The course was never altered from Port au Platte to St. Thomas, except for the purpose of navigation against the current.

37th. It was sold to the Campagnie Trans-Atlantic. He has always known her with that company. He supposes the sale was a good one, and he believes the vessel, if restored, will belong to that company.

73 38th. Two little guns, for distress and postal purposes, 10 swords and 6 revolvers; all that is down on the manifest of the ship. She was armed on account of the postal laws. They carried no other guns or arms of any sort or parts of arms not put together or finished, or any ammunition, fixed or unfixed, or balls, shells, hand-grenades, flints, percussion-caps, except for the revolvers and guns postal, or anything intended for military equipment. There were no belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or any sort of warlike or naval stores, nor were any of these things thrown overboard or concealed under the name of merchandise—absolutely none; nothing but coffee, tobacco, and rum, unless you call them naval stores. He says no, they took nothing contraband of war; that at the office of the company they know what all the bills of the consuls contain, and they would not take anything that would be contraband.

39th. He says the real destination is St. Thomas; take coal and water for boilers at St. Thomas for Havre, and he believes that the real and true property was all put down in the ship's papers, and that the papers were perfectly correct at the time they were taken by Mr. Russell.

40th. No; his vessel has not sailed under any convoy or war vessel. They had declared in the different places that they would not take any passengers, mail, or freight, as they were going direct to St. Thomas. No; he had no instructions. They could not resist capture with such cannon, and he had no instructions to destroy or refuse to deliver

74 up or conceal the vessel's papers, because all our papers were legal.

41st. No; he never tried to enter any blockaded port; he never attempted to enter any blockaded port. He was on the bridge when the "Yosemite" warned them off; he does not know, therefore, what conversation passed. After they were warned off they went to Port au Platte.

42nd. No; the vessel was a mail ship; he had none.

43rd. Never; the ship never had sailed at any time in concert or company with any armed vessel or vessels in crusing against the property or persons of the citizens of the United States.

Ne compremant et ne parlant pas la langue anglaise, je demande un recours contre toute interpretation ou traduction non conforme à mon pensée.*

PH. LANDGREN.

Sworn to and subscribed before us this 3rd day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

* Neither understanding nor speaking the English language, I ask for a petition of appeal against any interpretation or translation nonconforming with my thought.—E. J. VIETT, *Sworn Interpreter.*

75 United States of America, district of South Carolina.

THE UNITED STATES
vs.
THE OLINDE RODRIGUES.

Deposition of MAURICE PHERIVONG, a witness produced, sworn, and examined in preparatorio on the 2nd August, 1898, at Charleston, S. C., on the standing interrogatories established by the district court of the United States for the district of South Carolina, said witness having been produced for the purpose of such examination by the United States attorney in behalf of the captors of a certain ship or vessel called the "Olinde Rodrigues" and her cargo.

1st. Grande Ville, France, and he now lives at Havre, # 5 Rue de Conde, where he has lived for about 17 years. Province of Seine, Seine Inferieuse; he is a citizen of France and owes allegiance to France. He is not a citizen of the United States. Yes; he is a married man, and his family live at Havre.

2nd. Yes; he was on the bridge at the time.

3rd. In sight of the northern coast of Porto Rico; he was brought into Charleston; his boat is a merchant vessel, carrying mail, and she had no authority to make prizes. The reason he was captured, they said, he was trying to enter San Juan.

4th. French; no other colors on board.

5th. No; to the contrary, he had already turned his vessel on
76 our war ship before the gun was fired; as soon as he saw it he turned his vessel toward it. One gun was fired by the cruiser "New Orleans," by which they were captured; there were no other ships in sight at all; a sailing boat passed them; they were near the war ship when the sailing vessel passed about 3 hours after. His vessel is a merchantman only, belonging to the Compagnie Trans-Atlantic. The capturing vessel was a ship of war; he does not know of what force; he is not a warfaring man; all he can say is that it was a war vessel of the United States.

6th. He says the capturing ship had a right to look at his papers, but not to stop him, as his vessel is a postal vessel, and they said his papers were all in good order; therefore they had no right to stop him. He says they sent the soldiers on board and they were brought to Charleston. His vessel had never been condemned before.

7th. The "Olinde Rodrigues," and he was the master. He was appointed by the Compagnie Trans-Atlantic, at Paris. He has known the vessel 3 years and took possession of her at St. Nazaire, Brittany, France, from the agent of the Compagnie Trans-Atlantic, Mr. Lohnen. His home has been Havre for 17 years. He was born at Grande Ville, and he is a citizen of France.

8th. 1,675 tons; he does not remember exactly the number of the crew; 85 white & 22 blacks & 37 passengers; they are all French, and all were taken on at Havre, excepting some black laborers, whom he took on board at St. Thomas as stevedores; they are paid by the
77 voyage; he has not enough of a crew to do that work; he takes them from St. Thomas to wherever they are going and returned them there on the home trip. I shipped the crew; that is, the agent of the Compagnie Trans-Atlantic.

9th. I was captain of the boat. I had no personal interest in the boat or crew, and the officers of the boat had none, and the passengers—I don't know whether they had any interest in the merchandise on board or not.

10th. 3 years. I first saw her at St. Nazaire. She had 2 guns on board, on account of her being a postal boat. He does not know, but thinks 36 or 37 passengers; that does not concern him; that is the purser's business. There were 22 blacks, and the crew, he thinks, 85. She was built in England, Glascoe, about 25 years ago, and she has been called "Olinde Rodrigues" for at least 19 years. He is not sure, but thinks her former name was "Franconia," or something like that.

11th. St. Thomas. The voyage began at Havre and was to have ended at Havre. She had general cargo when she started—coffee, tobacco, cotton seed, 66 tons logwood, and 8 casks of rum and 12 bags of beeswax. The same was put on board in July, 1898. I know of no contraband goods of war on board.

12th. Yes; but they have been taken away by Lieutenant Russell. She sailed to Paulliac (France), St. Thomas, San Juan, Port au Platte, Cape Haytien, Port au Prince, St. Marque, Gonaive; then Port au Prince, Cape Haytien, Port au Platte, Havre, and ended at Havre. The voyage began there and ended there. The vessel carried coffee,
78 tobacco, and all sorts of things—general cargo. He says there might have been provisions in the bags, but all the provisions he knew about was for the ship's use and the crew. He says they carried potatoes, onions, and garlic to Port au Prince. He delivered cargo to St. Thomas, San Juan, Port au Platte, Cape Haytien, Port au Prince, Gonaise. We sailed from Havre 16th June; he can't recall all by heart; on the 19th June, Paulliac; St. Thomas on the 4th or 5th July, he does not remember which; San Juan, on the 5th July; he left St. Thomas on the 4th—on the same day; Port au Platte on the 6th, Cape Haytien on the 7th and Port au Prince on the 9th, St. Marque on the 9th, and Gonaise on the 12th. And on the return trip I left Gonaise on the 12th and arrived at Port au Prince on the 12th; left Port au Prince on the 13th and arrived at Cape Haytien on the 14th, and Port au Platte on the 15th, and left Port au Platte on the 16th at 6 o'clock in the morning, and met the gunboat at quarter after 8 on the morning of the 17th.

13th. All sorts of things, coffee, tobacco, rum, cottonseed, and wax and logwood. She was taken in July, 1898; he does not know what quantities were on board, but it is all in the papers.

14th. The Compagnie Trans-Atlantic, and the cargo belonged to several persons; he knows they were the owners by the manifest; he does not know what country they were citizens of.

15th. He does not know; he believes the vessel belonged to the company 19 years.

16th. July, 1898, at San Juan, Port au Platte, Cape Haytien, St. Marque, Port au Prince, Gonaise. I have already stated them.
79 I don't know the names of the laders or consignees that is in the manifest; I don't know what country they were from; he believes the people mentioned in the manifest or the consignees were the real owners; it is absolutely true the persons mentioned in the papers were the real owners; the cargo was of fair quality and different quantities;

he says he could not tell you how much coffee or tobacco they had on board; he says he could give no satisfaction on that; the goods are delivered on the dock and the dock company takes charge of the goods and delivers them to the rightful owners, but so far as he knows there was no fraud about it; absolutely none.

17th. He does not know; the copies were all on board, but they were taken by the prize master. No, he does not think any were false nor were any signed different in any respect from those on board the vessel at the time she was taken, and there were no others.

18th. No; nothing except those handed up to the prize master.

19th. Latitude 18′ 38″ north, longitude 68′ 22″ 30 west on the 17th July, 1898, at 8.20 in the morning; I had just passed the port of San Juan, about 7 or 8 miles eastward of the port and about 9 miles from shore, about 9 miles from Morro. They judged the distance in passing as they do from all points. That is naive, I don't think so. There was no charter party, it belonged to the company; charter parties are for small boats.

20th. The papers were, the act of showing it was a French boat
80 the clearance papers, and the bill of goods, and the bill of health, and his log and the list of the officers; none of the papers were burnt, concealed, or destroyed by anyone; everything was regular.

21st. Yes, I knew it; I knew the port was blockaded from the "Yosemite" on leaving San Juan; he says he knew about the war, but he did not know the port was blockaded before he met the "Yosemite;" he did not know it officially; it is not one vessel that can blockade a port; he did not hear it was blockaded, but he did hear there were war vessels in the seas, but he was not told he should not go there.

22nd. He says he telegraphed to his consul at San Juan to know whether the port was blockaded, whether he could go there or not, and the answer was by telegraph that they had received no official notice from Washington of the port's being blockaded, and to go on and make his voyage as usual; that was the first time, but on his return he did not go; on leaving the port of San Juan he met the "Yosemite" the 5th of July, he thinks, and he was boarded by one of the officers from the vessel, the U. S. S. "Yosemite;" then he received notice in writing by the officer on that day when out of the port while on the way to Port au Platte, 5 or 6 miles from the port of San Juan, when he met the "Yosemite;" he does not remember the name of the boarding officer from the "Yosemite;" it is on the papers.

23rd. Yes, the register was examined by the U. S. officer before the vessel was seized; he says that was before, because they took orders and then went back to the man-of-war; they had also
81 opened the hatchways and been in between decks; that was on the 17th July, by the officer from the "New Orleans," Mr. Russell, and the cadet; the first endorsement will show; he does not know the officer's name.

24th. No, he never attempted to enter with official notice; I have entered when nobody stopped me; and I went in as usual, and no one said anything to me, and therefore I did as usual; but since notified officially he did not attempt to enter. He did hear when he was in San Juan that it would be blockaded some future time, but that was not

officially; the French consul came on board his vessel and told him that, but he had not been notified of it officially, nor had any other nation been notified officially; he never heard that the port was blockaded.

25th. No, his vessel has never been seized and condemned.

26th. Yes, he sustained the damage of vexation from the detention and from the privation of being away from his family and losing the voyage he would otherwise have made, and from the affronts he has had to suffer. He has received nothing, nor has he heard of any, as he is forbidden communication, as he is a prisoner.

27th. He does not know, and he has heard of no war risks.

28th. Yes, they would have become the property of the consignees; he does not know if the lader was to take the chance of the market for the sale of his goods.

29th. In the countries in which he found them.

82 30th. By means of barges this was done at all the ports.

31st. He does not know; he does not think so.

32nd. The papers were taken off by the prize officer; the papers of the ship, his own papers; his reports were taken out to the marshal/ for the ambassadeur de France; he does not know about the papers addressed to Mr. Honateaux; they were sealed and posted; he does not know who addressed it; the minister of France at Port au Prince he believes; it is a postal matter.

33rd. Nothing has been unladened since he left Port au Platte; nothing has been touched.

34th. Yes. None were secreted; he does not know the passengers by name; there were some priests, religious women, merchants, drummers, the son of the President of the Republic of Hayti; they had no commission in the different places; they were taken aboard at the places I have mentioned; some were for St Thomas and Gaudaloupe, and some for Havre, France; they had no interest in the vessel, and I think none in the cargo; there were no officers or soldiers secreted on board, and no citizen of the United States on board.

35th. All his papers were perfectly true and regular; they were all true and correct; they were obtained from the agent of the company and the various consuls; they were obtained for this vessels only, and he does not know upon whose oath or affirmation; he does not know how long they were to last, and he does not know whether any fees

83 have been paid, but he supposes some fees were paid; he supposes the passengers did have their passports. He has made his report of the ship and cargo as he always did; he wrote it himself, and he says you will have to ask at Washington for it, he does not wish to tell; he will not tell you the contents of the paper whatever; you will have to ask at Washington. He says he has been deprived of his papers and he will require his lawyer to defend him, and he will not tell the contents of what he has written; when he has his attorney to defend him he will speak, not until then. He said he had a paper that was drawn up and signed by the passengers; it was sent to Washington; he does not know what it was; it was a sealed letter sent to the ambassador at Washington with papers which the marshal/ carried yesterday. He wrote no statement which he showed to the passengers.

36th. He was going to St. Thomas. Upon the appearance of the man of war he turned and ran towards her before the shot was fired. He

says he had to change her course to suit his navigation, but his course was always directed towards the course of destination. In the morning as soon as they could take the points of observation the route was the same excepting when he found the current was carrying the vessel towards the land; the helmsman was following the same course, but he changed it one or two points in order to keep her from the land, but he only changed it on account of the current. He thinks they were 65 miles from the port of destination when captured. His course was not altered to any other port or place.

37th. He does not know; she has not been sold since she
84 belonged to the Trans-Atlantic Company, and he thinks if the vessel is restored she would belong to her present owners.

38th. Two guns were mounted. They were only for the postal signals. They are guns of Napoleon I bu*l*id, of iron, 2 ft. 6 in. long. They are for distress signals and for the mail. He says he had on board revolvers and sabres. They are carried by order of the company. There were no weapons, warlike arms or armament of any description, nor any balls, shells, rockets, hand grenades, flints, percussion caps, or any military equipment. There were no belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or any sort of warlike or naval stores. There were none. They were not put down in the inventory. It was a mail boat and never took for freight arms during war time. Nothing was thrown overboard or concealed, nor on board under the name of merchandise.

39th. I swear, upon my honor as a Frenchman and a sailor, that my ship did not contain any ammunition of war, any military equipments nor provision for the enemy, and I protest against the legal seizure of my vessel; that I never attempted to enter San Juan, and that the destination of the vessel was St. Thomas.

40th. No; she has never sailed under convoy of any vessel of war. He had instructions from the company to avoid capture by the war ships of the U. S. He never had any instructions to conceal or refuse to give up his ship's papers.

41st. He never attempted to enter a blockaded port. He went
85 into San Juan, but he did not know it was blockaded. He says the "Yosemite" did not even put up a flag when he entered San Juan. Never, when he had been notified officially, has he entered a blockaded port. He first heard this port was blockaded by the "Yosemite" on the 5th July, when he was leaving San Juan. They had no conversation, because they could not understand one another, and therefore no conversation passed between them. He signified to him not to return to San Juan; that there would be 6 war vessels there, but he says there is only one, and a port is not blockaded with one war ship. He continued on his course to Port au Platte. He continued his route.

42nd. My vessel is a merchantman, and not a privateer.

43rd. No; she has not acted in concert with any armed vessel or vessels in cruising against the vessels or property of the citizens of the United States.

Before leaving St. Thomas for San Juan he had received a telegram from his consul, and in that way he heard of the blockade, but he had no official notice of the blockade.

Ne comprenant et ne parlant pas l'anglais, je m'inscris en recours contre toute interpretation ou traduction contraire à ma pensée.*

PHERIVONG M'CE.

Sworn to and subscribed before us this 2nd day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

86 The United States of America, district of South Carolina, in the district court.

THE UNITED STATES
vs.
THE STEAMSHIP "OLINDE RODRIGUES."

We, John Irwin, Edward McCrady, and Joseph W. Barnwell, prize commissioners, duly appointed by the above court, do hereby return into the court the foregoing pages from one to 63 (sixty-three) inclusive, containing the testimony of Maurice Pherivong, Landgren Phillips, Robert Raab, Emil Girny, George Darondeau, members of the ship's company of the captured ship "Olinde Rodrigues," and of August Julien, a passenger on said ship, sworn before us upon the standing interrogatories in preparatorio of the said court upon the days mentioned in each deposition separate and apart as required by law, after being duly sworn and their answers being interpreted by E. T. Viett, an interpreter, also duly sworn, and said depositions being reduced to typewriting and duly subscribed by each of the said witnesses in our presence, together with two exhibits marked "a" and "A" respectively.

Witness our hands and seals this 9th day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

87 CHARLESTON, S. C. *August 5, 1898.*

Additional explanations made by the witness, Captain Maurice Pherivong, at his request, in pursuance of the annexed letter by the permission of the commission.

On the outward voyage at each port I warned the agent of my company and the postal department that I would not touch at Porto Rico on the return, and that I would not take passengers, and that the letters would be returned to St. Thomas.

At Port au Prince and Cape Haytien we found in the papers given us by our agents a bill of health and a manifest of no cargo for Spanish ports that we had not demanded; that it would be of no use to us on this side.

Returning to Cape Haytien on the 14th of July, at 11 o'clock in the morning, they gave me on my arrival a despatch from the agent at San Juan saying: That we would have to take 50 passengers, first class, and

* Neither understanding nor speaking, I inscribe myself for a petition of appeal against all interpretation or translation contrary to my thought.—PHERIVONG MAURICE.—E. T. VIETT, *Sworn Interpreter.*

1 IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
THE STEAMER "OLINDE RODRIGUES," ETC. } No. 704.

Stipulation for addition to record.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the letter of Pherivong, master of the "Olinde Rodrigues," dated August 4, 1898, and hereto attached, shall be added to the printed record therein, to face page 40, the same having been inadvertently omitted from the transcript of the record filed.

E. K. JONES,
Counsel for Appellees.
HENRY M. HOYT,
Assistant Attorney-General.

2 "OLINDE RODRIGUES,"
Charleston, 4 août 1898.

Monsieur le PRÉSIDENT DU TRIBUNAL:

J'ai l'honneur de remir près de vous pour rectifier dans le sens suivant mes dépositions du 2 août que l' m'a relues hier et je crains d'avoir mal interprété plusieurs questions.

On m'a demandé si j'avais détruit des papiers du bord ou des passeports. J'ai répondu non; les expéditions du bord pour notre voyage ont été remises conformer et légales au maître de prise.

Ce que est absolument la vérité, ne comprenant pas dans l'expédition deux patentes de santé espagnoles, une de Port au Prince, une du Cape Haïtien que avons trouvés en dépouillant nos papiers; bien que ne les ayant pas demandées. N'ayant aucune valeur pour nous, j'ai dit au commissaire de les détruire à notre arrivée à Charleston, comme nous le faisons souvent pour bien des papiers qui nous sont inutiles.

L'expédition régulière ne compte que du dernier port, qui était Puerto-Plata, et c'est moi-même qui ai refusé à Monsieur notre agent de la prendre pour Porto Rico.

Je jure qu'à mon interrogatoire je n'y ai pas pensé, et ce n'est qu'à mon retour de la signature que le commissaire m'en a fait rappeler.

Je n'ai nullement cherché à déguiser la vérité, puisque je viens vous en aviser aussitôt.

Veuillez agréer, Monsieur le Président du Tribunal, l'assurance de mes sentiments distingués.

PHERIVONG, M'CE,
C. "Olinde Rodrigues."

True copy. Attest:
[SEAL.] C. J. C. HUTSON,
Clerk U. S. D. Court.

(On the margin:) J. W. Barnwell, Pr. Comr.

3 STEAMSHIP "OLINDE RODRIGUES,"
Charleston, On Board, 4 Aug., 1898.

MR. PRESIDENT OF THE COURT:

I have the honor to approach you to correct my depositions of the 2 August, which has been reread to me yesterday, and I fear I have badly interpreted several questions. I was asked if I had destroyed any papers on board or passports. I replied no. The papers—documents—on board for our voyage had been delivered up proper and legal to the prize master.

This is absolutely the truth, not including in the documents two Spanish bills of health, one from Port au Prince and one from Cape Haytien. which we found in opening our papers, although they had not bee demanded.

Not having any value for us I said to the steward to destroy them on our arrival at Charleston, as we often do with papers that are useless to u

The regular expedition only counts from the last port, which wa Puerto Plata, and I refused to take it from our agent for Porto Rico.

I swear that at my examination I did not think of this, and it is on' on my return from signing that the steward recalled it to me. I neve sought to disguise the truth, since I wish to advise you of it as soon a possible.

Please accept, Mr. President of the court, the assurances and my distinguished regards.

PHERIVONG,
Master of "Olinde Rodrigues."

4 (Indorsed:) File No. 17289. Supreme Court U. S. October term, 1898. Term No. 704. The United States, appt., vs. The steamship "Olinde Rodriguez," &c. Stipulation and addition to record. Filed April 5, 1899.

FOLD OUT IS TOO LARGE TO BE FILME

to hasten our journey by one day. I cabled immediately, "Daim," that is to say "Olinde Rodrigues," we will not touch at San Juan, will be at St. Thomas on the 17th.

On the 15th, at Port au Platte, I had made my clearance papers for St. Thomas, and I did not want any Spanish clearance. By their laws this last clearance from the last port was the only legal one.

Having received my papers at half past five in the evening, I did not leave until the next day, the 16th, at 6 o'clock in the morning, not wishing to find myself at night along the coast of Porto Rico.

88 The reason that we did not give up the two bills of health is because they did not form a part of the clearance of our ship for our itinerary, and they were left in the pigeonholes where they were. It was at the time of our arrival at the quarantine at Charleston that the purser spoke to me of them, and I told *them* that they were good for nothing and to tear them up.

The captain wishes to add that he does not remember the instance the other day about the destruction of papers that he has just told us about, and that he never had any intention to disguise anything or to deceive.

With the permission of the commission, the captain adds the sketch which he has made of the position of the vessel at the time of the capture, showing the usual route and the actual route which he was taking at the time of the capture, with the position of the capturing ship and his own ship.

PHERIVONG, M'CE.

Sworn to before me and subscribed this 5th day of August, 1898.

JOS. W. BARNWELL, *Prize Commissioner.*

(Here follow map marked pp. 89 and 90.)

91 [Compagnie générale Transatlantique. Rapport de Mer. Paquebot: "Olinde Rodrigues," Capitaine Phérivong. Huitieme Feuillet.]

Warned off San Juan July 5, 1898, by U. S. S. "Yosemite," Commander Emory.—JOHN BURNS, Ensign, U. S. N.

Je suis parti de San Juan (Puerto Rico) le Mardi, 5 Juillet, ayant à bord la poste, des passagers et des marchandises.

7*h.* 40 du matin, débarqué le Pilote, à la passe sous le Morro.

7*h.* 45 pris la route au N. 70° ot du monde. Temps couvert, orageux, houle du NE.

8*h.* 10, le croiseur Americain "Yosemite" me signale de stopper, ce que je fais aussitôt, et mets le cap au large. Lui continue à marcher devant moi la distance devenant trop grande, je mets en avant lentement, puis à demi vitesse.

92 8*h.* 50 le croiseur me signale d'approacher, qu'il désire communiquer. Mis à toute vitesse, le cap sur lui.

9*h.* il me signale de nouveau de stopper, qu'il va envoyer un canot.

9*h.* 10, une embarcation accoste à l'échelle de Bâbord, et deux officiers montent. Apres su avoir fait diverses questions, ils me notifient que le blocus du port de San Juan est officiel, et qu'au retour je ne pourrai y entrer.

9*h*. 40, les officiers Americains quittent le bord et je reprends ma route à toute vitesse à 10 heures. Beau temps, horizon tres brumeux, les terres convertes, belle bris et mer du NE.; roulis.

Mercredi 6, 5 heures matin-travers du Vieux-Cap, courant partant au N. O.

8 heures 15 stoppé, pris la pilote; entré mouillé Bâbord, filé 2 maillons, évite sur l'ancre et envoyé deux aussiéres sur la bouce du milieu.

Les pompes out toujours été franches. En foi de quoi, j'ai dressé le présent rapport pour valoir ce que de droit.

Puerto-Plata, le 6 Juillet 1898.

Le Capitaine, PHÉRIVONG, M^ce^ (MAURICE).

93 [Translation.]

[The Transatlantic General Company. Sea report. Packet-boat, "Olinde Rodrigues," Captain Pherivong. Eighth leaf.]

Warned off San Juan July 5th, 1898, by U. S. S. "Yosemite," Commander Emory.—JOHN BURNS, Ensign, U. S. Navy.

I left San Juan (Puerto Rico) Tuesday, 5th of July, having on board the mail, passengers, and merchandize.

7.40 in the morning disembarked the pilot at the channel, under the Morro.

7.45 took the course at N. 70 W. of the world. Weather cloudy, stormy, rolling wave of the NE.

At 8.10 the American cruiser "Yosemite" signalizes me to stop, which I do immediately and stand off. She continues her way ahead of me. The distance becoming too great, I first go slowly ahead, then half speed.

8.50 the cruiser signalizes me to approach, as she desires me to communicate with her. With great speed I go to meet her.

At 9 she signalizes me anew to stop; that she is going to send a canoe.

At 9.10 a craft comes alongside of the larboard ladder and two officers come up. After having addressed me various questions, they
94 notify me that the blockade of the port of San Juan is official, and that on the return I will not be able to enter it.

At 9.40 the American officers quit the deck and I pursue my way; in full speed at ten o'clock. Fine weather, horizon very foggy, the lands cloudy, delightful breeze, and sea of the NE. rolling.

Wednesday, the 6th, crossing of the "Vieux Cap" (old Promontory), current parting to the NW.

At 8.15 I stopped, took in the pilot; entered, anchored larboard, shipped two (maillons), swung on the anchor and sent two cables on the buoy of the middle.

The engines have always been free.

In testimony whereof, I have drawn up the present report to prosecute one's right.

Puerto Plata, the 6th of July, 1898.

The Captain, PHERIVONG, M'CE.

(M'ce stands for Maurice, his Christian name.)

E. T. VIETT, *Sworn Interpreter.*

95 Vice-consulat de France à Saint Marc (Haiti).

Patente de santé.

Au nom de la République,

Nous, vice-consul de la République Française à Saint-Marc (Haiti), certifions que le vapeur appelé "Olinde Rodrigues" jaugeant 1675 T. $\frac{72}{100}$ sous pavillon français Capitaine Phérivong part de ce port chargé de produits du pays, équipé de cent sept hommes, y compris le capitaine, suivant le rôle de son equipage visé par nous pour aller aux Havre avec escales et ayant des passagers.

Déclarons, en outre, que la santé publique est bonne dans la ville de Saint-Marc, et qu'il n'y existe aucune maladie épidémique ni contagieuse.

En foi de quoi, nous avons délivré la présente.

Saint-Marc (Haiti), le 9 Juillet 1898.

Le vice-consul de la Republique Française l'agent consulaire de France.

[SEAL.] A. BANTIN.

96 Vice-consul of France at Saint Marc (Hayti).

Bill of health.

In the name of the Republic.

We, the vice-consul of the French Republic at Saint Marc (Hayti), certify that the steamer named "Olinde Rodrigues," 1675$\frac{72}{100}$ tonnage, sailing under the French flag, Captain Pherivong, leaves this port loaded with the products of the country, equipped with 107 men, including the captain, following the rôle of the crew signed by us to go to Havre, and stopping at various ports, and having passengers.

Declaring, in addition to the above, that the public health is good in the city of Saint Marc, and that no epidemic or contagious diseases exist there.

In faith of which we deliver this.

Saint Marc (Hayti), July 9th, 1898.

The vice-consul of the French Republic consular agent of France.

A. BRUTIN.

Translated under order of district court U. S., dist. South Carolina. E. T. Viett, sworn interpreter, Jan. 20, 1899.

97 Agence consulaire de France au Gonaives, Haiti, Republique Française.

Patente de santé.

Nous, agent consulaire de France aux Gonaives (Haiti) certifions qu'au départ de ce port du paquebot Français "Olinde Rodrigues," Capitaine Phérivong, Maurice, jaugeant 1675 tonneaux, équipé en tout de cent sept hommes, ayant à son bord des passagers et un chargement de diverses marchandises, la santé publique est bonne dans la ville, qu'il n'y existe aucune maladie épidémique ou contagieuse, et que les pays environnants sont sains.

En foi de quoi nous avons délivré les présentes.

Aux Gonaives, le 11 Juillet 1898.

L'agent consulaire de France.

[SEAL.] EM. LANCELOT.

98 Consular agency of France at Gonaives, Hayti, French Republic.

Bill of health.

We, consular agent of France at Gonaives (Hayti), certify that on the departure from this port of the French merchant ship "Olinde Rodrigues," Captain Pherivong, Maurice, 1675 tonnage, equipped in all with one hundred and seven men, having on board passengers and a cargo of sundry merchandise. The public health is good in the city, no cases of epidemic or contagious diseases exist, and the surrounding country is healthy.

In faith of which we deliver this, at Gonaives, the 11th July, 1898.

Consular agent of France.

EM. LANCELOT.

Translated under order of district court U. S., dist. South Carolina. E. T. Viett, sworn interpreter, Jan. 20, 1899.

99 Consulate of Denmark, Port au Prince (Haiti).

Bill of health.

To all whom these presents shall come

I, Eug. Miot, vice-consul of Denmark at Port au Prince, send greeting.

Whereas the French S. S. "Olinde Rodrigues," whose master is Pherivong, is about to sail from the port of Port au Prince for St. Thomas and other places beyond the seas, with 107 persons on board, including the said master and passengers.

Now, know that I, the said consul, do hereby make it known to all men, that at the time of granting these presents, no plague, epidemic, cholera, yellow fever, nor any dangerous or contagious disorder exists in the above port or neighborhood.

In testimony whereof I have hereunto set my name and seal of office.

Given at Port au Prince, on the thirteenth July, 1898.

EUG. MIOT, *Vice-Consul.*

100 *Bill of health.*

By A. Chitarin, Esq're. We do hereby certify that the French steamship called the "Olinde Rodriguez," of burthen per register 1675.72 tons, commanded by Capt. Pherivong, navigated with 90 men, and having on board passengers, being in all persons on board, leaves this port of Cape Hayti in free pratique, bound for St. Thomas.

We further certify that good health is enjoyed in this town and the adjacent country, without any suspicion of plague or contagious distemper whatsoever.

In witness whereof, we have hereunto set our hand and seal of office, at Cape Haitien this 14th day of July, 1898.

A. CHITARIN,
Danish Vice-Consul.

101 Royal Danish Consulate at Puerto Plata.

To all whom these presents shall come:

Whereas the French S. S. "Olinde Rodrigues," of $1,675\frac{72}{100}$ tons, of which Pherivong is master, is now ready to depart from this port for St. Thomas with 107 persons including the master of said vessel.

I, therefore, by these presents do make known and certify that no plague nor any other dangerous or contagious disease at present exists in this port.

Given under my hand and seal of office at Puerto Plata, 15th of July, 1898.

MEMSEN, *Consul.*

102 Legation de la République Française à Port-au-Prince. N. 23.

Patente de Sante.

Nous E. E. et ministre plénipotentiaire de France à Port-au-Prince (Haiti) certifions que le bâtiment ci-après désigné part de ce port dans les conditions suivantes, dûment constatées:

Nom du bâtiment, Olinde Rodrigues. Passagers (des).

Nature du bâtiment, vapeur.
Pavillon, français.
Canons, sans.
Appartenant au port de .
Destination, du Havre.
Nom du capitaine, Phérivong.
Nom du médecin, Frochliger.
Equipage, tout compris, 107.
Cargaison, D. M.
Malades à bord, néant.
Etat hygiénique du navire, bon.
Etat hygiénique de l'équipage."
Etat hygiénique des passagers."
Vivres et approvisionnements divers.
Eau.

Nous certifions, en outre, que l'état sanitaire du pays et de ses environs est sains et qu'on ne constate aucun cas de choléra, de fièvre jaune, de peste.

En foi de quoi nous avons délivré la présente à Port-au-Prince le 13 du mois de juillet 189 à 4 heures ¼ du soir.

Par M. le Ministre:

[SEAL.]

THÉODORE MEYER,
Le Ministre Plénipotentiaire.

EM. ROURIER,
Le Chancelier.

103 Legation of the French Republic at Port-au-Prince. No. 23.

Bill of Health.

We, E. E. and Minister Plenipotentiary of France at Port-auPrince (Hayti), certify that the vessel herein described leaves this port in the following condition, duly sworn:

Name of boat, Olinde Rodrigues.
Nature of boat, steamer.
Flag, French.
Cannon, none.
Belonging to the port of .
Destination, Havre.
Name of captain, Pherivong.
Name of physician, Froelinger.
Crew, all complete, 107.
Passengers (of the)
Cargo, D. M.
Sick on board, none.
Hygienic condition of boat, good.
" " crew, good.
" " of passengers, good.
Sundry supplies and provisions.
Water.

We certify, in addition to the above, that the sanitary condition of the country and its vicinity is healthy, and that not a case of cholera, of yellow fever, or of pest exists.

In faith of which we deliver this at Port-au-Prince the 13th of the month of July, 1898, at 4.30 p. m.

By the Minister:

THÉODORE MEYER,
Minister Plenipotentiary.

EM. ROURIER,
The Chancellor.

Translated, under order of district court U. S., Dist. South Carolina. E. T. Viett, sworn interpreter, Jan. 20, 1899.

104 Distrito maritimo de Puerto Plata.

Patente de Sanidad.

Los que suscriben, miembros de la junta de sanidad, certificamos, que el buque expresado á continuación sale del puerto con las condiciones siguientes, debidament justificadas.

Nombre del buque, Olinde Rodrigues.	Toncladas, 1675.
Clase, vapos.	Destino, St. Thomas.
Nacionalidad, Frances.	Tripulación, 107.
Capitan, Pherivong.	Pasajeros, .
Procedencia, Cabo Haiti.	Estado sanitario del buque, buena.

Certificamo asimismo que este puerto y sus dependencias están libres de enfermedades, epidémicas y se preservan del contagio.

En fé de lo cual libramos la presente, conforme á las disposiciones de este Puerto.

Puerto Plata, Julio 15 de 1898.

C. A. ZAPA,
El Medico de Sanidad.

J. O. MENARD,
El Commandante del Puerto.

J. RIVERA,
El Secretario.

105 Maritime district of Puerto Plata.

Bill of health.

The subscribers, members of the board of health, certify that the ship mentioned below leaves the port having duly satisfied the following conditions:

Name of ship, "Olinde Rodriguez."	Tonnage, 1,675.
Class, steamer.	Destination, St. Thomas.
Nationality, French.	Crew, 107.
Captain, Pherivong.	Passengers, .
Port of departure, Cape Hayti.	Sanitary state of ship, good.

We also certify that this port and its dependencies are free from epidemic diseases and is kept free from contagion.

In testimony of which we issue these presents, in conformity with the dispositions of this port.

Puerto Plata, July 15, 1898.

C. A. ZAPA,
Health Officer.

J. O. MENARD,
Captain of the Port.

J. RIVERA,
Secretary.

Translated under order of dist. court U. S., dist. S. C.—Jan'y 18, 1899. W. A. Merchant, sworn interpreter.

106 Le vice-consul de France au Cape Haitien, tournique, certifie qu'au départ de ce port du paquebot "Olinde Rodriguez" il n'existe aucune maladie épidémique dans la ville et que les environs sont sains.

En foi de quoi je lui ai délivré les présentes.

Au Cape Haitien, le 11 juillet 1,898.

[SEAL.] LE VICE-CONSUL DE FRANCE.

No. 28.

Nous, agent consulaire de France à Puerto Plata (République Dominicaine),

Certifions: Qu'au départ de ce port du paquebot "Olinde Rodriguez," capitaine Pherivong, la santé publique est bonne dans la ville de Puerto Plata; qu'il n'existe aucune maladie épidémique ou contagieuse, et que les lieux environnants sont sains.

En foi de quoi nous avons délivré le présente, et y apposé notre sceau.

A Puerto Plata, le 15 Juillet 1898.

[SEAL.] JAYME BATLLE,
L' Agent Consulaire de France.

107 The vice-consul of France at Cape Hayti, Tournique, certifies that on the departure from this port of the packet boat "Olinde Rodrigues" there does not exist any epidemic disease in the city, and the suburbs are healthy.

In faith of which I delivered him this at Cape Hayti the 11th July, 1898.

THE VICE-CONSUL OF FRANCE.

No. 28.

We, the consular agent of France at Puerto Plata (Dominican Republic), certify that on the departure of the packet boat "Olinde Rodrigues," Captain Pherivong, the public health was good in the city of Puerto Plata; no epidemic or contagious diseases are in existence, and the suburbs are healthy.

In faith of which we have delivered this and attached our seal at Puerto Plata, July 15th, 1898.

JAYME BATTLE,
Consular Agent of France.

Translated, under order of district court U. S., dist. South Carolina. E. T. Viett, sworn interpreter, Jan. 20, 1899.

(Here follow tracings marked pp. 108, 109, 110, and 111.)

112 *Interrogatories de bene esse.*

Interrogatories to be propounded by a prize commission to any of a prize crew that may be produced as witnesses to be examined de bene esse in relation to any ship or vessel, goods, wares, or merchandise, which may be captured or taken as prize and brought into the district of South Carolina. Let each witness be interrogated to every of the following questions, and their answer to each interrogatory be written down under his direction and supervision.

1. Where were you born, and where do you now live, and how long have you lived there? Of what province or State are you a citizen, and to which do you owe allegiance? Are you a citizen of the United States of America? Are you a married man, and, if married, where do your family and wife reside?

2. Were you present at the capture or taking of the vessel? When and where was such seizure and capture made, and into what place or port were the same carried?

3. Under what colors did the captured vessel sail? What other colors had she on board, and for what reason had she such other colors?

4. Was any resistance made at the time of the capture and by whom? Were any guns fired, and how many and by whom? By what ship or ships was the capture made? Were any other and what ships in sight at the time of the capture? Was the vessel captured a merchantman, a ship of war, or acting under any commission as a privateer or letter of marque and *ap*prisal, and to whom did such vesssel belong? Was
113 the capturing vessel a ship of war, a letter of marque and reprisal, or privateer, and of what force.

5. What was the name of the vessel taken, and of her master or commander? Of what tonnage or burden is the vessel which has been taken and about which you are examined? What number of the vessel's company belonged to her at the time she was seized and taken, and how many were then actually or board her? What countrymen are they?

6. State the degrees of latitude and longitude in which the said vessel and her cargo were captured, and also the year, month, and day, and time thereof, in which such seizure was made, and in or near what port or place and how far from the shore, and whether it was a port of any State or territory of the United States of America, and what one.

7. Towards what port or place was the vessel steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? At what distance was she therefrom? Was her course altered at any, and what time, and to what other port or place, and for what reason?

114 United States court, district of South Carolina.

Ordered that the within interrogatories be adopted as the questions to be propounded to any members of a prize crew who may be examined de bene esse in prize causes in this court.

WM. H. BRAWLEY,
U. S. Judge.

MAY 25th, 1898.

115 The United States of America, district of South Carolina.

THE UNITED STATES
vs.
THE "OLINDE RODRIGUES."

Deposition of WILLIAM HENRY BURNELL, a witness produced de bene esse on the sixth day of August, A. D. 1898, at the city of Charleston, South Carolina, on the interrogatories de bene esse established by the district court of the United States for the district of South Carolina in all prize cases; said witness having been produced for the purpose of such examination by the United States in behalf of the captors of a certain ship or vessel called the "Olinde Rodrigues" and her cargo.

To the first question witness says: Memphis, Tennessee, and I now live there when at home, and have lived there all my life, 21 years. I am a citizen of Tennessee and owe allegiance to the United States. I am not a married man.

To the second question witness says: I was present at the taking of the vessel. I was a private in the marines. The capture was made on Sunday morning, 17th July, 1898, off San Juan, Porto Rico, and she was brought into Charleston, South Carolina.

To the third question witness says: French colors. I don't know whether she had any other colors on board. She had the flag of the company.

116 To the fourth question witness says: No resistance was made, but they tried mighty hard to get into the harbor. One gun was fired by the "New Orleans." I was on deck, but I was in the cabin at the time. The capture was made by the "New Orleans." A sailing ship was in sight at the time of the capture. The captured vessel was a merchantman, and she belonged to the Trans-Atlantic Company. The capturing vessel was the U. S. cruiser "New Orleans."

To the fifth question witness says: "Olinde Rodrigues." I don't know the name of the captain I don't know the number of the ship's company. Part of the crew were negroes from St. Thomas; they spoke English, and the rest seemed to be native Frenchmen, and they spoke French.

To the sixth question witness says: I don't know the latitude and longitude. It was on the 17th of July, 1898, off San Juan, Porto Rico. I judge we were, when the capture was made, between seven and eight miles off, and it was not in any port of the United States.

To the seventh question witness says: She was steering to San Juan. I heard a great commotion on deck, and they said there was a vessel making for San Juan. I am not much of a seaman, but I feel satisfied that she was steering for that port. I couldn't tell how far she was from us at the time shot was fired, because I was in the cabin. When we fired the shot, she altered her course and came towards us.

117 WM. H. BURNELL.

Sworn to before us this sixth day of August, 1598.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*

118 The United States of America, district of South Carolina.

THE UNITED STATES
vs.
THE "OLINDE RODRIGUES."

Deposition of JOHN H. MATHISEN, a witness produced and examined de bene esse on the sixth day of August, A. D. 1898, at the city of Charleston, South Carolina, on the interrogatories de bene esse established by the district court of the United States for the district of South Carolina; said witness having been produced for the purpose of such examination by the United States in behalf of the captors of a certain ship or vessel called "Olinde Rodrigues" and her cargo.

To the first question witness says: Norway. I now live in Brooklyn, N. Y., and have lived there since 1886, and I am a citizen of Norway, but I have taken out my first papers to become a citizen of the United States. I did owe allegiance to Norway, but have announced my intention to become a citizen of the United States. My papers are not yet complete. I am not a married man.

To the second question witness says: Yes; I was present at the capture. The capture was made a little after eight on the 17th July, off San Juan, Porto Rico, and the ship was brought into Charleston.

119 To the third question witness says: French colors. She had the French mail flag at the fore and her company's flag at the main; and he doesn't know whether she had any other colors on board.

To the fourth question, witness says: No resistance was made; one gun was fired by the "New Orleans" and the capture was made by the "New Orleans." There was one bark in sight; I think she was a Norwegian; I couldn't say. The captured vessel was a merchantman; she belonged to the Compagnie Generale Trans-Atlantique, Havre. The capturing vessel was the U. S. S. cruiser, "New Orleans."

To the fifth question, witness says: The "Olinde-Rodrigues;" I don't know the master's name, I don't know the tonnage of the vessel. 107 belonged to the ship's company—somewhere around that. I don't know the exact number, but about forty or fifty passengers. I don't know what country they belong.

To the sixth question, witness says: I don't know the latitude and longitude. It was on the 17th of July, 1898, between eight and nine o'clock, when captured. She was off San Juan, Porto Rico, about seven miles off shore. It is not a port of the United States.

To the seventh question, witness says: She was steering right straight for San Juan, Porto Rico. I was on the bridge of the "New Orleans" with the glasses in my hands. I was chief quartermaster. She

120 was heading across our bow. We were heading about from west and into the land, because we were afraid that she would get in before we did, west by south, maybe a little closer to the south, and she was right across our bow. She was going directly into the port. Her course was not altered upon the appearance of our vessel. After we fired the shot she altered her course and came towards us. When we fired the shot she was about five miles from us. When I first sighted the vessel she was on our starboard bow and we were sailing a little to

the west of the Morro, and she was heading directly across our bow, and if she kept on she would have come to the harbor entrance, a little east of Morro. She had full amount of steam on and seemed to be putting lots of coal on. She made no sign of stopping until we fired. Before we fired we put on all the steam we could; we thought she was going to gain the harbor before we did. Our ship was lying to the west of Morro Castle, when we saw a bark and we made sail for her, but in the meantime the "Olinde-Rodrigues" came up and we changed our course and went around and steered for her, knowing we could get a bark at any time. The "Olinde-Rodrigues" did not stop until we fired the shot, but put on all the steam she could to gain the harbor.

J. H. MATHISEN.

Sworn to before us this 6th day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*

121 The United States of America, district of South Carolina.

THE UNITED STATES
vs.
THE "OLINDE-RODRIGUES."

Deposition of MICHAEL CHARLES SINGER, a witness produced and examined de bene esse on the sixth day of August, A. D. 1898, at the city of Charleston, South Carolina, on the interrogatories de bene esse established by the district court of the United States for the district of South Carolina in all prize cases; said witness having been produced for the purpose of such examination by the United States in behalf of the captors of a certain ship or vessel called the "Olinde-Rodrigues," and her cargo.

To the first question, witness says: I was born in Germany—Amberg, Bavaria. I now live 42 Oak street, E. Orange, New Jersey. I have lived there about two years. I am a citizen of the United States and owe allegiance to the United States, and am not a married man.

To the second question, witness says: Yes, I was present at the capture. I am a sergeant of marines, in charge of the six-pounder on the starboard waist. Capture was made on the 17th July, 1898, off San Juan, Porto Rico, and the vessel was brought into Charleston. I am one of the prize crew who brought her in.

122 To the third question, witness says: French colors. She had her company's flag and no other, so far as I know.

To the fourth question, witness says: No resistance was made at the time of the capture. We fired one six-inch gun on the forecastle. Capture was made by the "New Orleans," a U. S. cruiser. There was one sailing ship in sight at the time of capture. I think the captured vessel was a merchantman. The capturing vessel is the United States cruiser, "New Orleans."

To the fifth question, witness says: "Olinde-Rodrigues." I don't know the name of the master, nor her tonnage. Don't know exactly how many in the crew, or how many other people on board. They were mostly Frenchmen and a few Spaniards.

To the sixth question, witness says: I am not a seaman. I don't know the latitude and longitude. It was 17th July, 1898, about 7 or 8 o'clock in the morning, near San Juan, Porto Rico. The captured boat was about six miles from shore when we fired the shot. It was not a port of the United States.

To the seventh question, witness says: I don't know what her course was; she was going towards San Juan. I could see her. I was standing on the forecastle and she was in plain sight, and she was going in towards the harbor, because I could see her whole port broadside.

123 As soon as we fired the shot she turned around towards us. Before that she had not changed her course. She was going dead for the port as far as I could see her. When we fired the shot she was about six miles from us. We took full range of our six-inch gun, and it carried about half mile beyond her bow, just about six miles. Except what I have said, there was no other alteration in her course. She had up full steam; smoke was coming out of her thick. I couldn't see whether she increased her steam or not after we first saw her.

M. C. SINGER, *Sergt. U. S. M.*

Sworn to before us this 6th day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*

124 United States of America, district of South Carolina.

THE UNITED STATES)
vs.
THE "OLINDE RODRIGUES.")

Deposition de bene esse of M. B. RYAN, a witness produced, sworn and examined, on the 6th August, 1898, at the city of Charleston, S. C., on the interrogatories for depositions de bene esse established by the district court of the United States for the district of South Carolina, the said witness having been produced for the purpose of such examination by the U. S. attorney in behalf of the captors of a certain ship or vessel called the "Olinde Rodrigues" and her cargo.

To the first question, the witness says: Halifax, and I have lived in Gloucester, Mass., 12 years; I am a citizen of Halifax and owe allegiance to Great Britain; I am not a citizen of the United States, and I am not a married man.

To the second question, the witness says: Yes, it was off San Juan, the 17th July, 1898, and she was brought into Charleston, S. C.

To the third question, the witness says: French colors; she had her house flag and postal flag up.

To the fourth question, the witness says: No resistance was made; we fired a shot, but she did not seem to come to at the proper time,

125 but after a while she headed for us and came towards us. One gun was fired by the "New Orleans," and the capture was made by the "New Orleans." There was a bark in sight at the time of capture. The vessel captured was a merchantman, and our vessel was a man of war, first-class cruiser.

To the fifth question, witness says: "Olinde Rodrigues"; I don't know the name of her master; I don't know her tonnage. There were about 99 in her crew, and about 37 passengers. Some belonged to Havre and some to St. Thomas, but the most of them to St. Thomas.

To the sixth question, witness says: I don't know the latitude and longitude, and I don't know what cargo she had aboard. She was captured on the 17th July, 1898. The captured ship was not nearer than 8 miles from shore, and it was not a port of the United States.

To the seventh question, witness says: She was steering for the land of San Juan, Porto Rico; her course was at pretty near an angle where we had to steer to cross her bows in the way she was steering. At first when we sighted her I saw her smoke; all hands saw it. My work was below, but I said I will stay up—our ship was starting on full steam—until we get near that steamer and see whether she is a prize or not. I stayed up a few minutes; our steamer was gaining on the French steamer, and when we got her hull in sight she was steering at an angle to us, and we had to change our course to steer in across her bows to head her off; she was steering directly for San Juan. We fired the 6-inch gun off the forecastle and the shot fell within half a mile across her bow, but she
126 did not heave to at present, but in a few minutes she turned towards us. We kept our steam up until we got alongside with her, and then we stopped, lowered the boat, and sent her aboard, Mr. Russell commanding the boat's crew. He examined the steamer and found what she had aboard and came back and reported, and then the prize crew were ready to be sent aboard.

MICHAEL B. RYAN.

Sworn to before us and subscribed this 6th day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

127 United States of America, district of South Carolina.

THE UNITED STATES }
vs.
THE "OLINDE RODRIGUES." }

Deposition de bene esse of ROBERT L. RUSSELL, a witness produced, sworn and examined, on the 6th August, 1898, at the city of Charleston, S. C., on the interrogatories for depositions de bene esse established by the district court of the United States for the district of South Carolina, the said witness having been produced for the purpose of such examination by the United States attorney in behalf of the captors of a certain ship or vessel called the "Olinde Rodrigues" and her cargo.

To the first question, witness says: Edgefield County, S. C.; my official residence is in Clark County, Ga., and has been for the last 30 years; I am a citizen of Georgia, and owe allegiance to the United States; I am a citizen of the United States; I am not a married man.

To the second question, witness says: I was present; it was about 7 miles off the harbor of San Juan, Porto Rico, and the vessel was brought into Charleston, S. C.

To the third question, witness says: French colors, no others, she was flying the flag of the company.

To the fourth question, witness says: No resistance was made.
128 One gun was fired by the "New Orleans," and the capture was made by the "New Orleans." There was a square-rigged sailing vessel in sight at the time. The vessel captured was a merchantman, and belonged to the Compagnie Génerale Trans-Atlantique. The capturing vessel was a ship of war of 3,600 tons, main battery of six 6-inch and 4.7 quick firing guns, and ten 6-pounders, four 1.5, and four 6 smaller rapid-fire guns.

To the fifth question, witness says: "Olinde Rodrigues," and the captain's name was Pherivong. Her tonnage was 3,188, net registered tonnage 1,675. There were 107 in the crew (and 37 passengers), and they appeared to be French.

To the sixth question, witness says: I have not memorized the latitude and longitude, but the vessel was about 7½ miles to the northward of San Juan, Porto Rico, on Sunday, 17th July, 1898. The final seizure was made at 11.30 a. m. The vessel was stopped between 8 and 9 o'clock, and the search began between 8 and 9, but the final taking possession was about 11.30 a. m., 7½ miles north of San Juan, Porto Rico, and it was not then a port of the United States.

To the seventh question, witness says: Towards the port of San Juan, Porto Rico. Her course was not altered until after the shot had been fired by the "New Orleans;" she was between 7 and 8 miles from San Juan when brought to. I was officer of the deck of the "New Orleans" during the morning watch from 4 to 8 a. m., Sunday, July 17th, 1898.

The "New Orleans" was at that time blockading the port of San
129 Juan, Porto Rico. During the morning watch a square-rigged sailing vessel was sighted to the eastward, and subsequently found to be steering to the westward. While the "New Orleans" was observing this sailing vessel, and lying to without headway, smoke was sighted bearing from the "New Orleans" about west by north. This fact was reported by me to the commanding officer of the "New Orleans;" this was between 7 and 8 a. m. Shortly after making this report I could discern with the glasses the two masts and one smoke pipe, from which the smoke was coming. I then saw that the steamer was heading directly towards San Juan, Porto Rico, and reported this fact to the commanding officer; the vessel then bore about west half north. The orders came to me as officer of the deck from the commanding officer of the "New Orleans" to turn the "New Orleans" and head for the steamer at half speed. This order was quickly followed by another order to go at full speed towards the steamer. The "New Orleans" was then turned and headed a little ahead of the steamer on the compass course west, first going ahead half speed and then full speed. I whistled down to the engineer on watch and told him to go ahead as fast as possible, as we were going to try and cut off a steamer heading for San Juan. Shortly after and just before 8 o'clock I changed the course to west half south, as the steamer was steadily drawing to the southward. At 8 o'clock I was relieved as officer of the deck by Ensign Blakely. I then started to write up my log, but before completing it I was directed by the commanding officer of the "New Orleans," who was on the bridge, to go

down on the forecastle and get the forward 6-inch gun, which is in my division, ready for firing. I went to the forecastle, had
130 the covers taken off the gun had the head stays cone up and clothes lines lowered and everything cleared away forward ready for firing the forecastle 6-inch gun, the gun being already loaded with common shell and powder charge. I got the crew at the gun and reported to the commanding officer I was all ready to fire the gun. The steamer that we were trying to cut off was now in plain sight and still heading towards the entrance of San Juan Harbor, evidently firing vigorously, as large volumes of smoke were coming from the funnel, and it appeared probable that she would be able to get into San Juan. The commanding officer of the "New Orleans" directed me to have the 6-inch gun fired ahead of the steamer. The gun was given the almost extreme elevation and aimed about half a mile ahead of the steamer with a powder charge and fired, the shot dropping about half a mile ahead of the steamer. At first the authorities of the steamer appeared to disregard the warning shot, and the steamer was kept on her course, heading for San Juan. I then gave orders to load the gun again, but before the gun was actually loaded the steamer changed her course and headed towards the "New Orleans." The commanding officer of the "New Orleans" then called to me to be ready to board the steamer, and I went aft and got my side arms and the "New Orleans'" boarding book and got into the port whaleboat with the regular crew and two extra men. The whaleboat was lowered and shoved off and headed towards the steamer. When some little distance from the "New Orleans" the commanding officer of the "New Orleans" hailed me and said that he thought the steamer, which had now approached near the "New Orleans," was the French steamer "Olinde-Rodrigues"
131 and told me to look in the boarding book and see if she had not been warned by the U. S. S. "Yosemite." I looked in the boarding book, which contained a list of the vessels that had been warned off San Juan, and saw an entry which stated that the "Olinde-Rodrigues" had been boarded by the "Yosemite" July 5th and warned, and I made this report to the commanding officer of the "New Orleans." I then proceeded to the "Olinde Rodrigues" and went aboard that steamer, leaving the whaleboat alongside with her crew and taking only the two extra men on board the "Olinde Rodrigues" with me. I examined the papers furnished me by the captain of the "Olinde Rodrigues," stated to be the ship's papers, and I directed one of my men to wigwag to the "New Orleans, "This is the 'Olinde Rodrigues.'" After having examined the papers of the steamer, said to be the ship's papers, I had a wigwag message sent to the "New Orleans," saying that the ship's papers were apparently all right, and I would now examine the cargo holds. After making that examination I sent a wigwag message to the "New Orleans," saying that I had not found anything contraband. I then asked for instructions from the "New Orleans," and was ordered to have "Olinde Rodrigues" remain where the vessel was and return myself on board the "New Orleans." When I got on board the "New Orleans" I was told that I was to take the "Olinde Rodrigues" to Charleston, S. C., to be turned over to the U. S. prize commissioners. I reported to the commanding officer of the "New Orleans," verbally confirming the reports which had been made by wigwags, and stated that although I

had found the ship's papers apparently all right, and although the captain of the "Olinde Rodrigues" said he was going to St. Thomas
132 yet I was confident, from having watched the steamer's course, that she had intended going into San Juan, Porto Rico. The accompanying diagram, Exhibit A, shows how the steamer was heading, as it appeared to me. I have indicated the position of the "Olinde-Rodrigues" by the letters "O. R." and the position of the "New Orleans" by the letters "N. O." The first position of the "New Orleans" was N. O. sub. 1. The "New Orleans" was drifting, with engines stopped, and heading in a northernly direction; smoke was sighted bearing west by north from the "New Orleans." From this position later the "Olinde-Rodrigues'" masts and smokepipe were sighted, bearing west half north position of the steamer indicated by the letters O. R. sub. 1. After the "New Orleans" had been turned to head for the steamer, and when we got the "New Orleans" going ahead full speed, the "New Orleans" was heading west for the "Olinde Rodrigues," which then, of course, bore west. Just before I was relieved from charge of the deck, in order to carry out the captain's order to head for the steamer, I found it necessary to change the course of the "New Orleans" to west half south, as that was then the bearing of the "Olinde Rodrigues." At that same time, 8 o'clock, I was relieved from charge of the deck and went down to prepare the forecastle gun for firing, as I have already testified. From time to time, while performing this duty, I looked at the "Olinde Rodrigues," which appeared to continue in the course which I have indicated, about south southeast, and always towards the entrance of the harbor of San Juan. When between 7 or 8 miles distant from the Morro of San Juan, and about 4 or 5 miles distant from the "Olinde Rodrigues," in obedience to the orders of the commanding officer of the New Orleans, and
133 when the two vessels were occupying the positions O. R. sub 4 and N. O. sub 4, the forecastle 6-inch gun was fired; and after the "Olinde Rodrigues" had come up to the "New Orleans" the two vessels occupied the positions O. R. sub. 5 and N. O. sub. 5, which was at a place about $7\frac{3}{8}$ miles to the northward and westward of the Morro of San Juan. The bearings shown on Exhibit A, and indicated in my testimony, which were before 8 a. m., were taken by me from the compass. After 8 a. m., and until I was ordered to board the "Olinde Rodrigues," I was down on the forecastle, and could only estimate the positions and distances by the eye. The "Olinde Rodrigues" did not alter her course from the time I sighted her until after the shot was fired ahead of the "Olinde Rodrigues," then she altered her course and stood towards the "New Orleans." After I got on board the "Olinde Rodrigues," I told the captain of the "Olinde Rodrigues" to head his vessel out and to go around on the outside of the "New Orleans," and I also told him that if he allowed his vessel to go any nearer the Morro that the "New Orleans" would fire at us. After the "Olinde Rodrigues" was officially taken possession of by me on my second visit to that steamer she was headed for Charleston, S. C., to be turned over to the U. S. prize commissioners at that port, for the reason that she had attempted to enter the blockaded port of San Juan, Porto Rico, after having been formally notified on the 5th July, 1898, by the U. S. S. "Yosemite," that the port of San Juan, Porto Rico, was blockaded by the United States naval forces.

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I told the captain of the "Olinde Rodrigues" not to let his vessel go any nearer the Morro. We were then thought to be within distant
134 range of the guns of the Spanish fortifications. At the time the shot was fired ahead of the "Olinde Rodrigues" both ships were thought to be approaching dangerously near the range of the Spanish guns of San Juan. So much so that many remarks were made within my hearing, saying that she would escape us and get under the forts before we could stop her, and it would have been impossible for the "New Orleans" to have gotten alongside of the "Olinde Rodrigues" before she reached easy range of the Spanish guns of San Juan. She was brought to altogether by fear of the guns of the "New Orleans."

ROBT. L. RUSSELL.

Sworn to and subscribed before us this 6th day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

135 The United States of America, district of South Carolina, in the district court.

THE UNITED STATES
vs.
THE "OLINDE RODRIGUES."

We, John Irwin, Edward McCrady, and Joseph W. Barnwell, prize commissioners, duly appointed by the district court of the United States for the district of South Carolina, do hereby return and certify that the foregoing depositions de bene esse, type written on twenty-two pages, were taken by us upon the special interrogatories established by the said court on the 25th of May, 1898,

The witness Robert L. Russell being prize master of the prize crew, and the witness William T. Tarrant being an officer of the prize crew, and the witnesses William Henry Burnell, John H. Mathisen, Michael Charles Singer, and M. V. Ryan being members of the prize crew, produced before us by the district attorney, said witnesses being each carefully sworn, examined, and cautioned to testify the truth, and the testimony given by each of them being reduced to typewriting and thereafter subscribed by the said witnesses in our presence, with two exhibits, both marked "A."

Witness our hands and seals this 9th day of August, 1898.

JOHN IRWIN, *Prize Commissioner.*
EDWARD MCCRADY, *Prize Commissioner.*
JOS. W. BARNWELL, *Prize Commissioner.*

136 *Proclamation.*—Filed Aug. 8, '98.

The United States of America, district of South Carolina, in the district court. In admiralty.

THE UNITED STATES
vs.
THE STEAMSHIP "OLINDE RODRIGUES."

Proclamation.

Hear ye! Hear ye! The United States of America against the French steamship "Olinde Rodrigues," her tackle, apparel and furniture, and cargo.

All persons who have anything to say why the ship "Olinde Rodrigues," her tackle, apparel and furniture, and cargo should not be condemned and sold to answer the prayer of the libellant in this cause come forward and make your allegations in that behalf.

Return.

I hereby certify that the within proclamation was duly made this 8 day of August, A. D. 1898.

LAWSON D. MELTON,
U. S. Marshal.

137 *Claim for Ship.*—Filed Aug. 11, '98.

District court of the United States, district of South Carolina.

THE UNITED STATES OF AMERICA
against
THE STEAMSHIP "OLINDE RODRIGUES," Her Engines, Boilers, &c., and Her Cargo.

And now, to wit, this 10th day of August, 1898, comes Maurice Pherivong, master, and as such the lawful bailee of the steamship "Olinde Rodrigues," her engines, boilers, &c., and her cargo, and intervening as such bailee for La Compagnie Generale Transatlantique, owner of the said steamer and carrier of her cargo, appears before this honorable court and makes claim to the said steamer, her engines, &c., and her cargo, as the same are attached by the marshal, under the process of this court, at the instance of the United States of America, under a libel against the said steamer and her cargo as prize of war; and he avers that the said steamer with her cargo was not and is not lawful prize, and he prays in behalf of the said owner of the said steamer and carrier of her cargo, for and in whose behalf he makes this claim, to be permitted to defend accordingly and to show cause, pursuant to the terms of the monition herein issued and served upon the said steamer and her cargo, and her master as bailee, why the said steamship, her engines, &c., and her cargo should not be condemned as lawful prize of war, but should be duly restored to her owner and carrier, respectively, as aforesaid, with damages and costs.

PHERIVONG, M'CE.

Sworn to and subscribed before me this 10th day of August, 1898.

C. J. MURPHY,
Depty. C. C. C. U. S., Dist. S. C.

138 *Test Affidavit M'ce Pherivong.*—Filed Aug. 11, '98.

UNITED STATES OF AMERICA,
District of South Carolina, ss:

Maurice Pherivong, being duly sworn, deposes and says: I am the master of the French steamship "Olinde Rodrigues," and as such master and bailee have duly made claim to the said steamship and her cargo in the cause now pending in the district court of the United States for the district of South Carolina, at the suit of the United States of America against the said steamship and her cargo to condemn the latter as prize of war.

The said steamship is owned by La Compagnie Transatlantique, a French corporation, and is one of a regular line of steamers owned and operated by the said company between Havre, France, and several of the West Indies islands, and has been in that service for a number of years past. The said company is a large corporation, and owns and operates a great number of steamships and maintains regularly established lines of communication, notably between Havre and New York, Havre, Cuba, and Mexico, St. Nazaire and Colon, and an intercolonial service in the West Indies, all of which are termed its Atlantic services. It also owns lines of steamers plying between various ports in the Mediterranean, and in the aggregate of tonnage and number of ships it is one of the largest steamship companies in the world. Its operations are carried on under subsidies from the French Government for carrying the mails, and its lines and points of communication and the dates of departure from the various ports are fixed and regulated by the postal authorities of France.

139 The regular itinerary of the service to which the "Olinde Rodrigues" belongs is from Havre to Paulliac (Bordeaux), to St. Thomas, St. Juan (Porto Rico), Port au Platte, Cape Haytien, Port au Prince, St. Marc, and Gonaives, thence on the return voyage to Port au Prince, Cape Haytien, Port au Platte, St. Juan, St. Thomas, and Havre. Since the institution and notification of the blockade at St. Juan by the United States naval forces this latter port has been omitted from the itinerary. I sailed with my ship from Havre on her last voyage on the 16th of June, 1898, and left Paulliac (Bordeaux) for St. Thomas at four o'clock in the afternoon of the 19th of June, 1898. I arrived at St. Thomas on the 2d of July, at one p. m., and discharged such of my cargo as was consigned to that port and for ports on the south coast of Hayti. Before proceeding to St. Juan I inquired of the company's agent at St. Thomas whether there was any blockade at St. Juan, and was informed that there was none. I then, as an additional measure of precaution, had my company's agents telegraph the same inquiry to the French consul at St. Juan, and received the following answer:

"Transat, Santomas. Consul, France, aucune notification officielle blocus croit paquebots doivent essayer suivre itineraire ne courent aucun danger."

Which translated into English is as follows:

"Transat (i. e.) the cable name of La Compagnie Generale Transatlantique, St. Thomas. Consul of France no official notification of

blockade. Believes that packet ships should follow their regular routes. They do not run any danger."

140 I then proceeded to St. Juan and arrived there in the daytime of July 4th, without encountering any blockading ship or meeting any difficulty in entering the port. I then discharged my cargo for St. Juan, and sailed the next morning for Port au Platte, and on my way out, some five or six miles out of port, was stopped by the U. S. cruiser "Yosemite," which sent an officer and men on board, who told me the port was blockaded. A memorandum of this fact was made upon the ship's log book. I then proceeded to the other ports of my itinerary. On the return voyage I refused to take any cargo, passengers, or mail for St. Juan, and in proceeding from Port au Platte, instead of taking the route to St. Juan, I took the regular route for St. Thomas. I have fully explained this in my testimony before the prize commissioners in my examination in preparatorio. When I had proceeded to a point several miles beyond the entrance to St. Juan, I was overhauled in broad daylight on the 17th of July by the U. S. ship "New Orleans," about nine or ten miles at sea, and whilst I was on my regular course to St. Thomas, and ordered to proceed to Charleston, on the charge of attempting to break the blockade at St. Suan. I furthermore state that my ship had no passengers, cargo, or mails, or anything else for St. Juan, her cargo consisting of coffee, tobacco, cotton seed, logwood, and some casks of rum and a few miscellaneous articles, all for Havre and other European places. I absolutely deny that I ever intended or ever attempted to break the blockade at St. Juan as charged against me, but allege on the contrary that when my ship was captured she was proceeding on her regular and proper route for St. Thomas—had, in fact, got far past the entrance to the harbor of St. Juan, which could have been

141 easily entered, had the deponent so desired, before encountering the "New Orleans," as above stated.

I annex hereto copies of my report of the facts to the French ambassador at Washington, and the statement of the passengers of my ship, marked Exhibits "A" and "B," respectively.

PHERIVONG M'CE.

Sworn to and subscribed before me this 10th day of August, 1898.

[SEAL.] C. J. MURPHY,
Dep. C. C., U. S. S. C.

142 *Decree of district judge.*—Filed Aug. 13, 1898.

United States of America, district of South Carolina, in the district court, in admiralty.

THE UNITED STATES *vs.* THE OLINDE RODRIGUEZ. } Opinion.

BRAWLEY, district judge.

Condemnation of the "Olinde Rodriguez" is demanded on two grounds: (1) the entry into the blockaded port of San Juan, Puerto Rico, on July 4, 1898, and departure therefrom on July 5; (2) the attempt to

enter the same port on July 17. The cause is before me on the testimony taken by the prize commissioners in preparatorio, and by the practice of this court such testimony is admissible upon this hearing. Certain depositions of officers and men from the United States cruiser "New Orleans," taken de bene esse, were presented, but the Supreme Court of the United States having decided in the "Sir William Peel," 5 Wall., 534, that "in cases of prize no evidence is admissible on the first hearing except that which comes from the ship, either in the papers or the testimony of persons found on board," these depositions can not be considered.

The evidence in preparatorio is confined to the depositions of officers, crew, and passengers of the captured ship, taken in reply to certain standing interrogatories, and the papers and documents found aboard. This
143 practice, which prevails in England and in this country, and which had its beginnings in the civil law, generally suffices to determine whether the captured vessel is or is not the property of an enemy. In the earlier years this was the chief function of prize courts, but this method of procedure is ill adapted to the ascertainment of the truth in cases of capture for attempts to enter blockaded ports, which, since the invention of steam power, is of such frequent occurrence that it may be almost said to have become a business, for vessels engaging therein rarely carry among their papers condemnatory evidence of their guilt, and their officers can not be expected to admit the illegality of their calling. A searching examination and cross-examination, not permissible under the present practice, and especially the examination of witnesses from the capturing vessel, can alone enable the court to reach a final conclusion as to the truth of the charges preferred.

In this hearing, limited as it must be to the testimony coming from the captured ship, the incriminatory averments will be considered each in its order, and, first, as to the entry into the port of San Juan on July 4. The "Olinde Rodrigues" is a large and valuable steamship belonging to the Compagnie Generale Transatlantique, a French corporation. It receives a subsidy from the French Government and carries its mail upon a regular itinerary prescribed by its postal establishment. It sailed from Havre on June 16, 1898, with a crew of 85 men, touched at Paulliac, France, leaving that port on June 19, and arrived at St. Thomas on July 3. Thence its regular course was to San Juan, Port au Platte, Cape Haytien, St. Marque, Port au Prince, Gonaive, and to return by the same ports, the voyage terminating at Havre, France.

That the sailing for a blockaded port with knowledge of the
144 blockade is a breach of the blockade and subjects the ship to condemnation is a well-settled law. The "Vrow Johanna," 2 Rob., 91, the "Neptunus," 2 Rob., 92, are cited to sustain the proposition. In the "Neptunus," a vessel sailing from Dantzic, October 26, 1798, was captured in attempting to enter the port of Havre on November 26. Notification of the blockade had been made February 23. Sir William Scott held that a master of a vessel can not be heard to aver against a notification of a blockade that he is ignorant of it; that notification to any foreign government would clearly be to include all the individuals of that nation, it being the duty of the government to communicate the information to its citizens.

The sailing of the "Neptunus" for the blockaded port eight months after the notification subjected her to confiscation, but it appeared from the testimony that while on the way to Havre she fell in with Admiral Duncan's fleet, was examined, and liberated by the captain of a frigate, who, on being asked whether Havre was under a blockade, said "it was not blockaded." This captain was mistaken, but the information having been given and accepted in good faith, this great judge said that it would be pressing "a pretty strong principle rather too strongly" if he looked retrospectively to the state of mind in which the master stood before the meeting with the British fleet; and the "Neptunus" was discharged. There being no denial of the sailing into San Juan, two inquiries must be affirmatively answered before condemnation would follow: The first is whether the port was in fact blockaded, and the second is whether the "Olinde Rodrigues" had notice thereof. They may be conveniently considered together. Two proclamations of the President of the United States have a bearing on the subject. The first dated April 26,
145 1898, declares adherence to the rules of the declaration of Paris, among which are adopted the following: "Blockades, in order to be binding, must be effective." The second proclamation, bearing date June 27, 1898, declares that the United States "has instituted and will maintain an effective blockade" of certain ports in the island of Cuba which had not been included in the proclamation of June 22, and "also of the port of San Juan in the island of Porto Rico." The declared object of the war with Spain was to expel that sovereignty from its domination in the island of Cuba, and to enable the inhabitants thereof to establish a free and stable government, the intention to acquire new territory being expressly disavowed; and the conquest of the island of Porto Rico does not appear to have been within the contemplation of the Congress which declared the war. It is a matter of current history that early in May the fleet of Admiral Sampson, which had been engaged in blockading certain Cuban ports, sailed for the Island of Porto Rico for the purpose of intercepting the Spanish fleet, commanded by Admiral Cervera, which had sailed from the Cape de Verde Islands shortly before, destined, it was supposed, to relieve the blockaded ports in Cuba. Admiral Sampson, after remaining for some days in the waters near Porto Rico, not finding the object of his search, on May 12 bombarded for a few hours the fortifications defending the entrance to the harbour of San Juan. This bombardment does not seem to have been seriously intended to reduce and capture the town of San Juan, and beyond trying the range of his guns was without result. Shortly thereafter his fleet returned to the Cuban waters, and it was not until after June 27 that this Government proclaimed its intention to institute a blockade of the port of San Juan. This proclamation was made while the
146 "Olinde Rodrigues" was at sea. It is true that one of the witnesses whose deposition is before the court testifies that he had heard before leaving Havre of the blockade of San Juan. This was Robert Raab, the pastry cook, the product of whose art not uncommonly conduces to lively and disordered fancies.

The common law rules of evidence have no place in prize cases. They are essentially of the lex juris civilis, and hearsay and belief may be accepted as testimony, and in a proper case information which was so

widely circulated in a community as to reach the pastry cooks would be considered to have become the common stock of knowledge of which no man could plead ignorance; but to use words already quoted it would be pressing "a pretty strong principle rather too strongly" to thus affect the master of the "Olinde Rodrigues" with knowledge of a fact non-existent.

It is not unlawful for neutrals to trade with the enemy, and a blockade not being a necessary consequence of a state of war, it is not to be assumed that a neutral possesses any knowledge of its existence until the fact of its establishment is in some way brought home to him. There is no universally accepted doctrine as to what constitutes due notification.

The French, and therein the Continental jurists are in general accord with them, hold that there must be notice from the government instituting the blockade, and also notice from a vessel at or near the blockade port, that the blockade has in fact been established, and it is so provided in most of their treaties; while the theory generally accepted in England and the United States is that notification at the port of blockade should only be required when there has not been sufficient time for neutral ships at sea or in distant ports to become aware of its existence,

and that a rule requiring notification at the port of blockade offers
147 opportunity and increases the temptation to engage in such enterprises. There is no formal code of international law, and no tribunal to denounce penalties and punishments for its violation. It has its sanction and derives its force from the general consent of civilized nations and from the wholesome influence of their enlightened public opinion, which insensibly, in the progress of time, has evolved certain principles and usages consonant with sound reason which the tribunals of each nation enforce, moved by the collective and constraining will of the whole body of civilized States.

No machinery is provided by which one State can enforce conformity by another State to any rules which nations in general have not embodied in laws recognized by them. Until those halcyon days, now predicted, arrive, when the great Anglo-Saxon nations by their union and cooperation dominate and become the accepted light of the world, this with other like questions must await solution. The exigencies of this case do not demand any precise determination of what constitutes due notice of a blockade. All agree that mere suspicion is not enough, that there must be knowledge or knowable facts from which knowledge must be inferred. The "Olinde Rodrigues" being at sea when the proclamation was issued, her master cannot be affected by any notice given to his Government in his absence. Under the usage of all nations and in common reason and fairness, which precedes and gives sanction to all law, she had the right to proceed upon her regular route until her arrival at San Juan, unless notice of the blockade was actually received by her master, or unless such facts were disclosed from which actual knowledge must be inferred. It is strenuously urged by the attorney for the United States that he could

and probably did obtain such notice at St. Thomas. There is no
148 credible testimony going to show such knowledge. It is true that one witness says that he heard of the bockade when there, but as he had heard of it before leaving Havre and before it existed no credence can be given to such testimony. It is but fair to say of this witness

that as his testimony was given through an interpreter, he may have confounded the bombardment of the 12 May with the blockade subsequently proclaimed. St. Thomas is a small port, belonging to Denmark, of little commercial importance. The President's proclamation, first published in this country on June 28, could not probably have reached there by mail, and there is neither probability nor proof that it was sent by cable. The court is asked to infer, in the absence of any testimony to the point, that because it might have reached there through the cable and might have become generally disseminated, the master of this ship must be presumed to have had knowledge of it, and condemnation is asked upon bare suspicion of possible knowledge of a fact not known to exist. That there may have been rumors and expectations that the port of San Juan would be blockaded is probable. The bombardment six weeks before may naturally have awakened such expectation, and the master did what a prudent man with grave responsibility should have done, although no law requires it to be done. He made inquiry through the cable of his consul at San Juan, and received the reply that there had been "no official notification of the blockade; believed that packet ships should follow their regular routes. They do not run any danger."

Much stress was laid upon the words "official notice" in this reply, and the court is asked to infer that there may have been notice, though not official. It is true that notice to be binding need not be
149 official notice, but it is clearly a non sequitur to hold that because he says he has had no official notice it is therefore to be implied that he had other notice. It is natural that an official to whom an inquiry is addressed as an official should reply officially, and when he added the expression of his opinion that the ship could follow her regular route with safety, this negatives the idea that he had any knowledge that would awaken the apprehension of any hazard in her so doing.

It was under these circumstances that he sailed from St. Thomas upon his usual route to San Juan. Carrying the mails, it was his duty to go there unless forbidden by some paramount authority, and he would have been derelict in that duty if he had been diverted from his course by mere rumors.

If he had found the port blockaded upon his arrival at San Juan, his previous want of knowledge would not have justified an attempt to enter, but, so far as the testimony shows, there was no actual blockade of that port prior to July 4, and he entered without receiving any warning or meeting any hindrance. By the terms of the President's proclamation, the Declaration of Paris, which was directed against mere "paper blockades," that is, blockades not sustained by actual force or sustained by a notoriously inadequate force, was adopted, and he declared that "blockades in order to be binding must be effective." There is no precise definition of what constitutes an effective blockade, but the instructions issued by the Secretary of the Navy June 20, 1898, explain with sufficient clearness the duty of blockading vessels in this respect, and are intended for their guidance. "A blockade," says this general order, No. 492, "to be effective and binding must be maintained by a force sufficient
150 to render ingress to or egress from the port dangerous;" so we have from the highest authority in this country a distinct repudiation of the doctrine that a mere proclamation of an intention to blockade

a port, without sending thither an adequate force, is of any validity whatever. There is a provision in this circular that where blockading vessels are driven away by stress of weather, but return without delay to their stations, the continuity of the blockade is not to be considered to be thereby broken.

There is no evidence that any blockading vessels, previously stationed to guard the entrance, were temporarily absent through stress of weather on the day when the "Olinde Rodrigues" made her entrance into the port, but distinct grounds for inferring the contrary, because when she went out on her usual course the day following she was overhauled by the U. S. cruiser "Yosemite" and boarded by an officer who entered upon the log the notice of the blockade, in pursuance of the general order above referred to. Commander Emory, of the "Yosemite," is an officer of uncommon ability and accomplishments. He doubtless had a copy of these instructions, and probably, familiar with the law embodied therein, he would have seized the ship if he had found that she had taken advantage of his temporary absence, caused by stress of weather, to break the blockade. His omission to do so, with other circumstances, makes it highly probable that the blockade proclaimed on June 27 was not made effective until July 5, when the "Yosemite" arrived. If there was any evidence of fraudulent omission to take notice of what was proved to be a subject of general notoriety; if the proclamation of the President had had reasonable time to circulate and to affect with knowledge citizens of the country where it was published, or if there was any proof of actual
151 knowledge, however acquired, this would have imposed the duty of observance, but the President's proclamation does not proprio vigore bind a party who is ignorant of it, and being of no effect unless followed by a force adequate to support it, and there being no evidence of the presence of any such force prior to July 5, this court could not pass sentence of condemnation on the first charge without a violation of the law of nations and of every principle of justice.

The testimony relating to the second charge—the attempt to enter the port of San Juan on July 17—will now be considered. There is no question here as to notice of the blockade, for on July 5 due notice was entered upon the log. The testimony of the master is that after completing his prescribed itinerary and on his return voyage he sailed from Port au Platte at 6 o'clock on the morning of July 16; that at 8.20 in the morning of July 17 he was passing the port of San Juan about seven or eight miles eastward of the port and about nine miles from the shore; that upon seeing the United States cruiser "New Orleans" he turned his ship toward her; that one gun was fired across his bow; that he was boarded by Lieutenant Russell, an officer of the "New Orleans," who examined his papers; that upon being informed that his vessel would be seized he sent a letter to the commander of the "New Orleans" protesting against the seizure; that he had no intention of entering the port of San Juan and had already passed the entrance when his ship was stopped; that on the outward voyage, at each port, he had warned the agent of his company and the postal department that he would not touch at Porto Rico on the return nor take passengers for that port; that at Cape Haytien he had received a telegram from his agent at San Juan, informing him that there would be fifty first-class passengers there for him

and that he had cabled him immediately that he would not
152 touch at San Juan, but would be at St. Thomas on the 17th.

The testimony of the other officers of the ship is in substantial accord with the above. The purser and the head steward say that special instructions were given at Port au Platte not to receive any tickets for Porto Rico. August Julien, a passenger, is the only witness whose testimony suggests a doubt as to the truth of these statements. He says that his personal opinion is that the vessel would have entered San Juan if they had been able to do so; his personal opinion is that they would have run the blockade if they could have done so without danger of being captured. His first reason for that belief is that the captain had made a boast of having forced the blockade once before, knowing that the place was blockaded, but stated as his grounds for doing so that he had no official notification, but he knew it; and his second reason is that they could never get an answer—definite answer—as to where they were going, and when leaving Port au Platte they generally state where the destination is, but at this time nothing was posted as to the destination. He also repeats some rumors that he heard aboard that there was irregular merchandise for Porto Rico. This witness is a British subject, a native of Mauritius, of African descent, and is preparing for the priesthood. An incident which came to my notice before his examination caused me to doubt whether any statement of his could be accepted as absolute verity, and subsequently I have had reason to believe that his testimony is entitled to little consideration. Leaving it out, there is nothing in the testimony in preparatorio that furnishes any ground whatsoever for condemning the ship, but,

as has been stated before, it can rarely happen that a charge of
153 an attempt to break a blockade can be supported by testimony of the ship's officers and crew, and without some testimony from the capturing vessel it would be hardly possible in any case to pass a sentence of condemnation. All the circumstances of this case render it highly improbable that there was an attempt to break the blockade. The ship is a large and valuable one, belonging to one of the great steamship companies of the world; that she would run the risk of confiscation for the precarious profits of such a venture is scarcely credible. Ships of this class are not likely to engage in that kind of business. She was on her return voyage, laden with tobacco, sugar, coffee, and other products of that region, for which no market would probably be found in Porto Rico. She had left San Juan only 12 days before, and the profit to be gained by a return was so incommensurate with the risk encountered that it would require an overwhelming weight of evidence to countervail the positive testimony of her officers that they had no intention of entering that port. An order for the discharge of the ship would be made without hesitation but for the motion of the district attorney for leave to take further proofs. This motion is supported by the depositions de bene esse of Lieutenant Russell and others from the capturing ship, taken before the prize commissioners. Considered as affidavits they make a case against the "Olinde Rodrigues" not to be lightly dismissed. They swear positively that she was attempting to enter the port of San Juan when she was overhauled by the "New Orleans." To refuse the motion might seem to imply a belief that the

capture was due to superserviceable zeal or to speculative cupidity. There is no ground for such imputation. There is one aspect of
154 this case which suggests a motive for an attempt to enter which is entitled to consideration and concerning which some testimony might be obtained now which has not heretofore been available. After the destruction of Admiral Cervera's fleet and the surrender of Santiago it became highly probable that San Juan would be invested by sea and land, and therefore probable that the wealthy inhabitants of that city would attempt to escape therefrom, and in order to avoid the horrors of a siege they might have offered such a sum for transportation as would have tempted the master of the "Olinde Rodrigues" from the line of prudence which had theretofore marked his conduct.

Feeling that the Government is entitled to an opportunity of making its case, if after full consideration of its responsibility it is advised so to do, I will make an order allowing further proofs. An order may also be entered discharging the vessel upon stipulation for her value should the claimant so elect.

155 *Testimony on behalf captors.*

United States of America, district of South Carolina, in the district court.

THE UNITED STATES
vs.
THE "OLINDE RODRIGUES."

CHARLESTON, S. C., *September 15, 1898.*

Testimony taken under order of court on behalf of the captors.

The district attorney, with Mr. J. R. K. Bryan, appearing for the Government, and Mr. Rafael L. Govin for the claimants.

Captain W. N. FOLGER sworn.

By the DISTRICT ATTORNEY:

Q. State what position you occupy in the U. S. Navy.

A. I occupy at present the rank and position of captain—captain in the U. S. Navy.

Q. What, if any, vessel were you commanding on the 17th of July last?

A. I was in command of the "New Orleans," on the blockade station off the port of San Juan, Porto Rico.

Q. State in your own words what occurred on the morning of the 17th of July in relation to the steamer "Olinde Rodrigues."

A. On the morning of the 17th of July I went below from the bridge, as usual, at 4.30, having passed the night on the bridge. At about
156 6.30 the officer on watch reported that a sailing vessel was in sight to the northward and eastward, approaching the port. At this time my vessel, according to our log, was distant 15 miles from Morro Castle, which was bearing southwest. I would like to say here that any estimation of distances on the north side of Porto Rico is liable to be erroneous. It is impossible, unless you are in certain positions, which I will demonstrate, to determine accurately the position of any vessel from

the north side of Porto Rico, there being no salient points from which you might take bearings. First, there is, immediately lying in front of the harbor of San Juan, Morro Castle, but with the mist that overhangs the shore it is most difficult to determine. Another point which should be used with the Morro, and by means of which we usually determine our position, is a stranded vessel 6 miles to the westward of Morro; but you will realize a vessel only 6 miles from Morro would cover 2 points—too near together to determine, the angle being so small. At 8, 10, or 12 miles it is most difficult to tell where you are. Therefore, when I say the log states 15 miles, I do not think the log is right; I think 12 or 13 miles is better. However, we will take the log's statement, as that is an official document.

Some time after, having directed the officer on deck to wait, not to chase the sailing vessel which was reported at 6.30, another sail was reported—a steamer—this time to the westward. The expression that came to me was: "A steamer in sight to the westward." By "westward" that means anywhere from 2 or 3 points from north of west or south of
west. I then gave orders to turn to the west and chase the steamer.
157 This was, I think, a little before 7 o'clock, the steamer then bearing due west from us; in other words, she was as near to the land as we were, the land going in parallel of latitude directly east and west of Porto Rico. At that time she was hull down, 17 miles from us—the horizon usually gives 15 miles—she was hull down and only her mast in sight; they were well open. She was west from us, and with masts well open. If she was west from us a clear morning, she would be in sight 17 miles at least, the horizon being 15, and if the masts were open she must have been steering to a point of the compass way to the southward of east. That was the position in which she presented herself to me. In the first place, we headed directly for her. The impression she made on me was that she was steering due south, as I appeared to have occupied a position approximate to her length and, from the width between us, had she been steering towards me the two masts would have been one hidden by the other, being in line. Had she been steering for any point beyond Porto Rico, her masts, bearing west from me, if I was 8 miles from the land at that time, might have been open on the other side; but, on the contrary, they were wide open, with the head to the left or south. We started and raced for a point somewhere to the southward of both of us, I attempting to keep on the stranded bearing. If two vessels are approaching and the relative bearing does not change, they are merely shortening the lines which separate them. If the vessel I am chasing draws astern of me, I will pass ahead; if he draws ahead of that bearing, he will pass ahead of me; if we don't change, we are simply
drawing together, indicating it was one of two things, either that
158 he was going faster than I or running on shorter lines and could alter the bearings more promptly than I. As a matter of fact, he drew ahead of me, and finding that he might pass ahead of us and reach the Morro, which I assumed he was steering for and which I believe he was steering for, I put my helm to starboard to keep him on the same bearing, and so I altered my course a number of times to *to* the left until I was heading for the Morro, and I turned to my officer and said: "I fear we have lost him; he will get in before we can stop him." At that time

we were preparing to fire, and we ran on this way a few minutes longer, and I judge I was about 5 miles distant, heading at that time from Morro, and he also, when I gave the order to fire and landed the shot ahead of him. I would state, before this time and some time previously I had hoisted a signal, which was in plain sight. It is well known by all who go to sea that the winds blow always from *from* the eastward—the trade winds—and they would blow the flags out clear; and the order to heave to, which he is bound to obey, was in plain sight to him for several minutes, 15 minutes before he hove to, and which he did not obey. He can not claim he did not see these signals; they can be read 10 miles easily if they are blown out clear. He will acknowledge the wind is blowing it from the eastward and I heading southward would make those flags plainly visible.

Finally the shot was fired and he brought up immediately afterwards; it was a minute or two before he brought up. This was a large gun, firing 100 lbs. in way of powder charge, and so the discharge was visible, and every man on his ship was watching my ship at that time; every man on his ship was watching my ship at that time and saw the dis-
159 charge if they could not hear it. They saw the discharge, and then the projectile travelled 4½ or 5 miles and fell in front of them, throwing up a column of water as high as a three-story Charleston house. That was in plain sight from us, which of course was further than from his vessel. Of course he saw it, and he was doubtless annoyed at being caught and being discovered under the range of my guns; he did not turn immediately, but some seconds after he put his helm to starboard and headed for me. At that time I stopped the engines and waited for him; no necessity to go on, and at that time I had in mind I would have to chase the sailing vessel, and I waited to the eastward of the Morro, meaning that he should come to me, as I would have further to go for the other vessel. He came to me and I sent Mr. Russell on board; he knew of the earlier phases of the affair, but he had been relieved in the meantime by Ensign Blakely, whom I am bringing with me this time as a witness. As we neared the vessel we read her name, and then it occurred to me, recognizing the name, that this vessel had already run the blockade once before. As a matter of fact my predecessor had told me she had been warned and the warning had been entered on her register, which was a fact; I therefore called to the boat before it got away, and directed the officer of the deck to examine his boarding book and see whether or not the boarding of the "Olinde Rodrigues" was there, which he did, and called back "Yes." I then said, "She is a prize; has already been warned." Had anybody at that time said to me that she was bound to any other port than San Juan, I should have considered him mad; he could not have been bound under the course he was steering, unless
160 he went over the land, to any other port than one in Porto Rico, because the turning point was 40 miles from there to the eastward. The officer boarded the vessel, and came back and reported to me it was the "Olinde Rodrigues;" that he found the warning entered in her register, and I decided, in view of the course that she had been steering, the position in which I had seen her, and the impossibility of reaching St. Thomas on that course, that her protest that she was bound for St. Thomas was of no avail, and I therefore directed him to proceed with her to Charleston.

I would like to illustrate my evidence as given in that account with the approximate positions of my ship at the time that we sighted her up to her boarding, on the chart, assuming that she was distant 17 miles, as a vessel can be seen—her masts—about that distance, let her run be what it may; her speed is 12 knots I have heard, but that may not be testimony. My speed was about 17 knots; I have a final speed of 22 knots and was rapidly increasing all the time; and I would like to take that chart, which I have not seen before, which came from the "Mayflower," and place the bearings on there, with my approximate distance from land and from port.

The U. S. Hydrographic Office chart offered in evidence of the island of Porto Rico and the neighboring waters on which the approximate positions occupied by the "New Orleans" the morning of the 17th July are given, before the seizing of the vessel and while chasing her and at the final capture; the lines also indicate, as will be *be* explained, the bearings of the "Olinde Rodrigues" during the chase and her approximate position when the shot was fired.

161 At the time the "Olinde Rodrigues" was sighted the "New Orleans" was at the position B, Morro Castle being 12 miles distant and bearing southwest by west at that time. The instant the vessel was sighted she bore about west by north. I was called and came on deck immediately, at which time the vessel bore west when sighted by the officer on deck, and when I saw her her masts were wide open, as if you were looking from a point perpendicular to her keel. Her masts retained that relative position until the shot was fired, when she changed her course, bringing her two masts in one, perhaps over an angle of 5 points, and headed for the "New Orleans." When I reached the deck she bore west half south, and I steered a slight angle to the southward of her, she apparently heading me off rapidly. I successively steered courses, finally heading direct for the Morro, before the moment arrived at which I considered her within range of my guns. Her original bearing is indicated by A on the chart, her bearing when I reached the deck indicated by E, and the courses steered successively by the "New Orleans" are F, G, H, and I, I being the bearing of Morro Castle, and all are indicated on the chart.

I desire to call attention to the fact that the Culebra Passage leading to St. Thomas is more than 40 miles distant from the position at which the vessel was brought to by our shot.

I desire to call the attention of the court to the fact that any vessel on the lines of bearing taken from the "New Orleans" heading for Culebra Passage—I ask, how is it practicable for a vessel on lines A and E, for a vessel bound for the Culebra Passage prior to the shot, to have her

162 masts open? They would be closed from that position, like that [indicating]; as a matter of fact, from my ship they would look like that [indicating]. That vessel could not have been heading for Culebra Passage with her masts in this angle.

Q. Have you explained now every figure you have made on that chart?

A. I think I have nothing more to say in regard to the chart. G, H, and I represent courses which we steered; E is the first chasing course and the bearing of the "Olinde" when the commanding officer reached

the deck; F the course steered finding the "Olinde" was crossing my bows; G, H, and I, courses steered finding the "Olinde" still crossing my bow; P is the approximate position when shot was fired; R the proximate position of "Olinde" when shot was fired.

By Mr. BRYAN:

Q. Is Morro Castle a fortress?

A. It is a fortified castle.

Q. With guns?

A. Yes.

Q. What range of guns?

A. My predecessor gave to me the information.

(Objected to by Mr. Govin as hearsay.)

Well, I know it now of my own knowledge that she possesses guns that have a range of 6 miles.

Q. At the time that the "Olinde Rodrigues" came to under your shot how near was she to the circle of the range of the 6-mile
163 guns of Morro Castle; or, in other words, how far distant was she from Morro Castle?

A. I can give that to you very accurately. Immediately the ship approached us, that being the boarding point, I gave the officer an order to head out, and we determined with considerable accuracy when we came together. She came to me $7\frac{3}{4}$ miles from Morro Castle, bearing about southwest.

Q. In coming to you across the lines what was her direction in coming to you?

A. Coming direct to me after the shot was fired and we did not come together until some minutes. She was 4 miles distant from me. I stopped my vessel at once when she starboarded the helm.

Q. On what course did she come to you?

A. About east-southeast; we ran inside of her; we kept going inside of her all the time; we were running faster than she; she bore at first west half south; she did not increase that bearing very much; she bore to the westward of me; her courses must have been between east and east-southeast.

Q. That was her course coming to you after she turned and after the shot was fired by you?

A. Yes; east-southeast I should say, and I will state that that would be also about the course for Culebra Passage.

Q. That was the course after she turned?

A. Yes; after she turned.

Q. How far was she from you approximately when she turned and you fired?

A. About $4\frac{1}{2}$ to 5 miles.

Q. Previous to that time, had she from the time you first sighted her changed her course any to the eastward?

164 A. In no manner.

Q. As to the vessel that was previously on the blockade station at San Juan before you, what vessel was that?

A. The "Yosemite."

Q. How did she in size compare to your vessel?

A. More than twice as large, nearly 100 feet longer, her bulwarks fully 12 ft. higher than mine above the water.

Q. As to your vessel and the "Olinde," how did they compare in size as to visibility?

A. She would be seen much further off than myself; being so high out of the water, she would be seen a couple of miles further off; she was a very large merchant vessel.

Q. When your vessel first sighted the "Olinde Rodrigues" was your vessel under way?

A. No; lying still. She was not moving or making any smoke, and on that account she would be less visible.

Q. When the "Olinde Rodrigues" was first sighted was she making any smoke?

A. When first sighted, vessels are almost always sighted by their smoke at sea; vessels steaming on their regular course fire occasionally and make smoke. When the "Olinde Rodrigues" sighted us apparently, as we assumed, she began to fire much more rapidly than she had been a few minutes before since we first sighted her; she made a great deal of smoke indicating she was increasing her speed.

Q. What did you judge to be the approximate speed of the "Olinde Rodrigues" previous to firing the shot?

165 A. I can't give you that; she was making all she could apparently. I imagined her to be a steamer which originally made 14 knots, probably now she makes 13 when pressed; I think she was making 13 knots when hove to; I was told she made 12 knots habitually.

Cross-examination by Mr. GOVIN:

Q. What was your last observation previous to the capture of the "Olinde Rodrigues"—the last observation taken on board the "New Orleans?"

A. After I left the deck, before we got the vessel, the navigator came up and stayed with the officer on deck. I wanted two senior officers there; and he as navigator, as far as practicable from the misty nature of the land, the early morning, and the fatigue and all that, established the position—it was put in the log as 15 miles distant from Morro, bearing southwest.

Q. What was the latitude and longitude of the vessel at that time?

A. I don't think the latitude and longitude is in my mind; you know the north coast of Porto Rico runs east and west.

Q. Before that, when was the position of the "New Orleans" taken accurately?

A. About a week—we do not determine the latitude and longitude when off blockade—and the last week it was made on our course over from Guantanamo. We don't determine the latitude and longitude daily when off blockade.

Q. You stated you were 40 miles from the turning point—

166 meaning Cape Culebra?

A. Yes; meaning the Virgin Passage.

Q. And how far from the land were you when you came on deck?

A. According to the navigator, about 10½ from land; according to myself when I came on deck, about 8½—about 8 miles.

Q. 8 miles from land and 40 miles from the Virgin Passage?

A. I don't say 40 miles. That is a matter of fact, and is shown on the chart.

Q. Did you take any bearings at that time of the coast?

A. I did not. I very rarely take bearings myself.

Q. As a matter of fact, you don't know where the "New Orleans" was?

A. No; except by my estimate, which is vastly better than bearings by the navigator at that time.

Q. How would you take the bearings off a point of land?

A. I don't know that I am required to answer that, but I will tell you. We usually take the bearings. In some cases we have a *vein'* over the compass, and we point the *vein'* towards the object and read off on the compass the point that the *vein'* says, if it is a compass; otherwise we take what is called an alidade, and we set the alidade on the course the ship is heading, and then we take the *vein'* and turn it round to the point of land and look through the *vein'*, the alidade bearing on the course, and looking through the *vein'* the reading of the alidade is the bearing of the point.

Q. Then your estimate of the "New Orleans" is arrived at how?

A. From a great deal of experience in judging distances. We had already had 3 days' experience of that particular coast.

167 Q. How do you know you were 40 miles from the Virgin Passage?

A. I have often thought of that. We considered St. Thomas as a sort of relief port, and we had to run about 40 miles before we turned down. I make up my mind what hour I will leave a particular point. From the point I am to the point I am going, Culebra being the turning point, I had 40 miles. It is also 20 or 30 miles from the entrance of St. Thomas, making 60 miles from San Juan. We used to count upon 60 miles, or my ship 4 or 5 hours from San Juan.

Q. At the time you came on deck and saw the "Olinde Rodrigues," previous to that had you been making a course from the Virgin Passage to that point?

A. Not at that time. I hadn't been to St. Thomas.

Q. How can you locate yourself 40 miles?

A. That 40 miles was near enough for my making my point with the captain of the "Olinde Rodrigues." It is so great a distance that he would have to run that I thought the course he was evidently making, if bound to St. Thomas, being 40 miles away, would lead him either into S n Juan or disaster on the beach.

Q. What had you been doing in the early morning?

A. The previous day we lay within 6 miles of Morro all day long, bearing south, say. We were north of the Morro, just outside of the range of her guns. When night there comes on we run sometimes to the westward and sometimes to the eastward, to deceive the Spaniards inside in regard to our position. By my orders the vessel that night was moving a certain distance to the eastward.

Q. How much?

168 A. Probably 4 or 5 miles; that is, she was headed out and allowed to drift in this easterly wind which I told you of, she lay in the trough of the sea.

Q. How does the current run there?
A. Tends to the eastward.
Q. Are you not mistaken about that?
A. No.
Q. You are sure the current runs to the eastward?
A. Know it, and so the captain will tell you.
Q. No; he says not?
A. Well, he does not know his business; he has not been off that port as long as I have.
Q. So the current runs east?
A. Yes, during that month, which will account for my great distance from Morro in the morning.
Q. Then the answers to my questions are the only means you had of locating the position of the "New Orleans" at the time you came on deck?
A. Yes, the only method of locating the "New Orleans," possible, is by bearings and one bearing was good, the Morro.
Q. Did you take that?
A. The navigator took that in the morning; I do not take the bearings.
Q. You really don't know the position of the "New Orleans?"
A. Except as my knowledge as a seaman and looking from the land.
Q. The morning was misty?
A. I don't recollect; let us say misty.
169 Q. How could you see 17 miles at sea on a misty morning?
A. The mist was over the land, not at sea; it was clear in the direction of the steamer.
Q. How high were you on the bridge?
A. I should say my bridge is 20 ft.
Q. What did you estimate the masts of the "Olinde Rodrigues" to be in height?
A. I expect 120 ft. high.
Q. That would make 140 ft. as a total height above the water?
A. Yes.
Q. The chart makes it 13.6 miles——
A. You can see a vessel further off than 13 miles.
Q. What was reported to you as the heading of the vessel before you came on deck?
A. A vessel in sight to the westward, heading for the coast.
Q. Was the report made by compass?
A. They probably did not take the bearings at once; an accurate bearing was taken after I got on deck.
Q. In your testimony regarding the chart how did you state that she bore?
A. That she probably bore west by north. That was before I came on deck; since, the bearing put her west half south.
Q. That was when you came on deck?
A. Yes; that taken when I came on deck was west half south. I remember hearing those words.
Q. What was the space of time between the report of the sighting of the ship and the time you came on deck?
A. Probably 3 or 4 minutes; I was only partially undressed.

170 Q. According to the statement made before you came on deck, and the statement made when you came on deck, what is the alteration in the bearing of the vessel?

A. The time I came on deck, if she were bearing west by north, she was bearing after I got on deck west half south.

Q. That is a point and a half?

A. Yes; she was reported as bearing to the westward; but westward is somewhat indefinite.

Q. How long would it take a vessel ordinarily to run a point and a half, in the position these two vessels relatively occupied, with a speed of 12 knots?

A. It would take probably 20 minutes or half an hour.

Q. Were you 20 minutes in coming up?

A. I was 3 minutes; all I know of her bearing was west half south; all I know before was a report through the marine orderly, who said she bore westward.

Q. Is there any officer on deck?

A. Mr. Russell, who gave the orderly orders.

Q. So Mr. Russell gave the orderly the bearing of the ship and he communicated it to you, and in 3 minutes you came on deck and then the bearing was taken and there was a point and a half's difference?

A. No; I said the bearing then was west half south.

Q. Do you realize she must have gone 4 miles in 3 minutes?

A. I realize this; the vessel was reported to me bearing to the westward—that when I came on deck she bore west half south—what she travelled when first reported and when I came on deck was what she could travel in 3 minutes—not a great amount.

171 Q. Then one of the statements must be in error; she could not change her bearing a point and a half.

A. No; she could change half a point, but not a point and a half. I did not place it at a point and a half.

Q. No; but your officer placed it at that?

A. I will state the log does not give her bearing; it says she was to the westward.

Q. At what time did you go on deck?

A. A little before 7, I think; I did not look at the time; those are times when you don't take much account of exterior circumstances.

Q. What courses did you follow?

A. I ordered immediately before I came on deck, Turn the vessel and steer for her at half speed.

Q. You steered then west by north?

A. When I came on deck she hadn't gotten around.

Q. Before you came on deck you gave the order, Steer for the vessel?

A. Yes; my vessel can't come around from a dead stop in 3 or 4 minutes. She was heading north, and she couldn't come around to west by north hardly before I got up there. The first course I gave on reaching the deck was west half south.

Q. How long did you continue on that course?

A. I couldn't state. As soon as I saw the "Olinde Rodrigues" drawing ahead of me I starboarded my helm; the first order was starboard a quarter of a point.

Q. There must be some way in which you can fix in your mind about the time you kept on the course.

172 A. No.

Q. Was it half an hour?

A. No.

Q. Was it 20 minutes?

A. No.

Q. 15 minutes?

A. No; probably 5 to 7 minutes.

Q. That was on a course west by south?

A. West half south. Then finding the "Olinde Rodrigues" was drawing across my bows and would reach San Juan before I could stop her I put my helm to starboard, bringing my head to port further so as to bring her back to the position on my starboard bow.

Q. What speed were you going then?

A. We started from nothing. I can't tell what speed at that time. In 20 minutes from lying still I can get 17 knots, so perhaps for the first 5 minutes I was going 8 knots. I can start at once at 6.

Q. 6, 8, and then 14?

A. Yes; and along 17.

Q. With an average of 12 knots?

A. No; the average was greater. We got it up very rapidly. I should say the average speed we made that morning was 13½. I changed the course in 7 minutes—that is, finding the "Olinde Rodrigues" on my bow and drawing from San Juan—that is, being in danger of getting under the Morro's guns before I could stop her.

Q. What course did you give?

173 A. I don't know, and it was not recorded.

Q. How long did you keep on that course?

A. I don't know. That was a time I depended on my judgment. Seeing her drawing ahead I would put it a little more.

Q. You think 5 minutes?

A. I don't know.

Q. Half an hour?

A. No; less than half an hour; the whole chase was about half an hour.

Q. How did you fix that time?

A. I think that was fixed in all our minds.

Q. Then the next course you must have run about the same time—5 or 7 minutes?

A. Probably; I don't know. As the vessel's position would change I would put the helm to starboard a little to keep her on the starboard bow. It is necessary to retain the relative position in order to get near, else she might get nearer in crossing my bows. It is necessary always to get the vessel on the same bearing when chasing a vessel.

Q. You were steaming 25 minutes with the various courses you made?

A. Yes.

Q. That means about 6 miles?

A. Yes.

Q. And the "Olinde Rodrigues" was 17 miles away from you when you got on the bridge; you were 8 miles from land?

A. I was about 8 or 10 miles from land; I was about 10 miles from the perpendicular point of the north and south lines from
174 Morro out, so if I ran 6 miles I would be about 4 miles from the perpendicular point. At that point I fired the shot, and I brought the vessel up directly on the north and south lines, as indicated on the chart.

Q. The "Olinde Rodrigues" was coming towards you; she was 17 miles away; she steamed about 11 knots?

A. About 17; that is the limit of distance; I don't say 17 miles; I say as a general statement a vessel is usually seen at sea, in clear weather, 17 miles.

Q. How far did you estimate the "Olinde Rodrigues" from you?

A. I believe she was 15 or 17 miles.

Q. As she steamed 25 minutes east to make 6 knots, she was running east?

A. No; she was running nearly south.

Q. You ran 17 miles in 25 minutes?

A. No; I was running various courses, from west to southwest by south, in all 25 minutes.

Q. And covered about 6 miles?

A. Yes.

Q. The "Olinde Rodrigues" was 15 or 17 miles?

A. Yes; bearing west.

Q. She was steaming south?

A. To the southward and eastward.

Q. How near south?

A. As I declined to give the position of the "Olinde Rodrigues," I can't tell exactly which way she was heading; but her apparent course, with her masts, seemed nearer south than to the east.

Q. But you can't tell which way she was heading?

A. Yes, she was heading more nearly to the south of the com-
175 pass than to the east of the compass; that was evident.

Q. If she was heading south, about how near did she come to you in distance in a straight line? Between the time you came on deck and when you fired—she was sailing almost south—she practically came almost nothing towards you?

A. She was steering to a point that brought her 5 miles from me to the westward when I fired my shot.

Q. I am talking of before you fired your shot.

A. She came something over 5 miles.

Q. And you went 6?

A. From the point where I started from, probably. You are estimating my speed; I am not estimating it.

Q. You are estimating the average speed about 13 miles?

A. Yes; that would bring us about to the point where I fired. I think the "Olinde Rodrigues" and ourselves probably approached the Morro on symmetrical angles.

Q. You could not have met in 25 minutes?

A. Yes; if he was going 12 knots and I on an average of 13. No; we did not meet in anything like it. Recollect my guns have a range of 5 miles, and I fired at him when 5 miles away.

Q. You had been going 25 minutes when you fired your gun?

A. Yes.

Q. And then she was 5 miles away?

A. Yes; bearing to the westward. It was a question which ran faster to the Morro; if I ran faster, he bore a little to the north of west. I think I ran the faster, and at the time of the shot I bore to the north of west.

Q. How did you fix that position?

176 A. From a long habit of continual practice. There was the Morro; and looking along the land from my present position, I could fix it more definitely now, knowing every foot of the coast; but I had only been there 3 days when I captured the "Olinde Rodrigues." Remembering the Morro, I had to keep away from fearing they were going to fire, and fearing that in 15 minutes more he would be under the guns of the Morro. As my mind goes back to the condition of affairs, I believe the "Olinde Rodrigues" was a little to the north of west, and when I fired my shot and we watched it go, the Morro was then on my port bow or nearly ahead, and he off in that direction [indicating], and this gun of the forecastle—this vessel over there—the shot jumped plump down from a quarter to a half mile in front of him 4½ miles off.

Q. How far from the Morro was he at that time?

A. Probably 8 miles, as we were a little less than 8, according to my testimony. If he bore a little north of west, that would make him a little over 8 miles, as our bearing stated by us 7⅞ miles off at that time; I waited for him there.

Q. At what point from Morro Castle did the two vessels come together; how did Morro bear from the two vessels when they came together?

A. Remember I had my Swede, and I preferred to wait to the north of east; I waited to the north and east to allow the "Olinde Rodrigues" to come up to me after she changed her course.

Q. How did the Morro then bear?

A. When we came together and came to communicate, I took an accurate bearing of the Morro, 7⅞ miles bearing southwest; as I

177 recollect we were to the eastward, way to the eastward of your position.

Q. If you were to the eastward of the north and south lines, how could Morro bear from you southeast?

A. I didn't say it did; it bore southwest.

Q. You have testified when you first sighted her the Morro was bearing southwest by west?

A. Yes; recollect that we were steering in a circle [indicating]; I think we were going faster and lost part of it—that is, the first part of it.

Q. Was not the Morro, at the time that both vessels were together, bearing southwest from you?

A. After we came together—recollect I waited for him—I allowed him to come up crossing the lines, and the Morro bore southwest.

Q. How did you say the "Olinde Rodrigues" steered to come up alongside?

A. I didn't wish the "Olinde Rodrigues" to come up between me and the Morro, and as we came close to each other I put my bows across her, and then she put her bows starboard and left me nearer the Morro than she was; he sheared outside of me.

Q. What course did he take?

A. There was no question of compass courses at that time; he was coming from the westward and bore a little north of west of me. Now, then, I steering to the southward and westward, cut him off, ran across him; that was my intention from the start. I did not intend to let him pass between me and the Morro; he might run to the Morro; he put his helm to starboard and ran out to us.

178 Q. You steered southwest by west when the "Olinde Rodrigues" was reported to you?

A. No, I did not; I did not say southwest by west; I steered west half south the first course.

Q. You said you were about 8 miles from the coast?

A. Yes, about.

Q. Not having taken any bearings, is it not possible that you might have been 12 miles?

A. No, because I ran such courses during the night that I reached a point when daylight came that brought me according to the log, which was too great according to my estimate, but according to the log 15 miles from the Morro bearing southwest; of that the accurate part is the bearing, the inaccurate part the distance, which was less; if the Morro bore 15 miles southwest I was distant from the coast probably 10½ miles, if you take a right-angle triangle. I got out the patent log astern and ran south 2 or 3 miles before the "Olinde" was sighted; that brought us to a position swinging the vessel out and allowing it to lie in the trough of the sea, not 15 miles, but 3 miles south of that position.

Q. How long did you drift there?

A. About an hour.

Q. That was 3 o'clock in the morning?

A. No, I have not mentioned hours.

Q. What time was it?

A. That was about—at half past 4 I went below; I had ordered her to be steered 3 miles from where we were and then turned to the north; that was probably quarter to 5, somewhere about that.

179 Q. You could not tell at night how far you were from shore?

A. Not at night; we would start off from Morro 6 miles, we would run say east or west, northeast or northwest, during a certain specified time.

Q. Tell us what it was that night?

A. Sometimes one thing and sometimes another; what it was that night my log will tell you that.

Q. I want your statement.

A. That I don't fix in my mind; I don't get paid for that; that particular night I don't know the courses we ran.

Q. How can you fix where the "Olinde Rodrigues" was at 4 o'clock in the morning if you don't know the course?

A. The navigator would report, we are 15 miles from Morro bearing southwest; I gave the order, steer south for 3 miles; that was in the morning, I know this; after daylight I left the bridge and went to my cabin, but the navigator must immediately tell me where the ship is and I say, "Put her in such a place and stop until I come out again;" he did that, which was this position, 3 miles south from the position which had

been measured 15 miles from Morro bearing southwest. As to what we did the night before, it having deen done every night for the last 6 weeks, I can't say; the log will tell.

Q. You have stated what you did at a definite distance and at definite times?

A. I will read from the log and tell you; we have done that every night for the last 6 weeks; I can't tell you what I did any par-
180 ticular night, but the log will. In spite of these gentlemen saying the current goes to the westward, the eastward current coupled with the east wind, the easterly wind blows to the west, but the current sets to the eastward; those two things, the current one way and the wind the other, would put us in the early morning sometimes at a point quite different from what we anticipated, so we had to have a margin so that at daylight we would not be too close to the shore, and we allowed a mile or two on the side of safety; we did not want to drift on the beach or under the guns of the Morro. That night we had followed certain courses all noted in the log, and the result of those courses with the wind blowing to the west and the current to the east, the ship forging ahead all the time, she reached a point by the various forces 15 miles to the north and eastward of San Juan.

Q. Couldn't that be 18 miles instead of 15?

A. No, under no circumstances; if it had been reported 18 miles I would have scalped somebody for allowing her to go that far, and I don't consider that she was 15 miles off, although I have no right to alter the log.

Q. Your opinion is not from an accurate observation of the latitude and longitude and bearings?

A. No, except my knowledge as an officer of the sea.

Q. Assuming that you had been off from the land we will say 18 miles.

A. That is an erroneous estimation.

Q. Assuming that you were 18 miles from the coast and the "Olinde Rodrigues" was taking the same, had the same bearing that was
181 reported to you at the time you came on deck, just before, wouldn't you have seen her with her masts open, the "Olinde" making a course south 69?

A. [Indicating on chart.] I am taking an erroneous position; you have them separated; you have not got them open, and I have given you 6 miles.

Q. Assuming you were 18 miles from shore and we were 17 miles from you and were making south 69, you say our masts were separated?

A. Yes; but not wide at a point 6 miles nearly from where I said you were.

Q. We get them separated there?

A. Yes, there is a point where you can get them apart, but in order to have them separated you have asked me to assume a position 7 miles from where you were.

Q. If these two ships, following relative courses as they approached, the masts would open, wouldn't they?

A. If she steered the same course and we steered the same course her masts would open very slightly; that is a question of mathematics.

Q. Here is a chart of the captain's; I wish you to give me the course from Port au Platte to St. Thomas?

A. I will admit that south 69 is the proper course beforehand for the Culebra Passage, but I only contest that you were making that course.

Q. What was your conversation with Mr. Russell when he reported the papers of the ship right and all regular?

A. He reported there was no log; they could not give the course. He said the captain behaved in a peculiar manner in regard to
182 the log; there was no official log, as we understand a log. I asked for the courses he steered and he gave me two courses, which he told me that the captain had gotten from his officers, not from the log; they told him they had a great hesitation about it. There was great difficulty about giving the log.

Q. That was in your mind when you ordered the vessel taken as a prize; didn't that lead you in your determination?

A. No; her breaking the blockade after being warned.

Q. Didn't Mr. Russell's report determine in your mind that she had broken the blockade?

A. It was necessary to examine and see if the warning by Commander Emory had been properly put down. I had knowledge that this vessel had been warned, but that that Mr. Russell found and took as evidence was only given to me on his return.

Q. You did not know of the entry on the register until Mr. Russell returned?

A. No. Then I asked him all the circumstances; how they behaved, and how the people appeared, and now I am going to tell you what he said.

Q. Give a general statement of all that occurred.

A. One thing which produced a profound impression on me was this: Mr. Russell speaks a little French; he was asked by the paymaster of the vessel, who speaks English (Mr. Russell did not give out the fact that he spoke French for a little while), "How fast do you steam?" Mr. Russell replied 21 knots. Mr. Russell reported to me that the paymaster then turned to the captain, "It wouldn't have done us any good, anyhow." We assumed, had we attempted to run ahead, we
183 would have caught them; that gave a bad color. I did not want to seize the vessel; I did not want any international question at all; I preferred not, but in face of the appearance of things I had to seize the vessel or I would have had trouble.

Q. Is that all Mr. Russell said?

A. That is all I have to say; I know of no incident that will do you any good.

Q. Is it possible at a distance of 17 miles to tell whether a ship is on one or another course within 3 or 4 points?

A. Within 4 points; yes.

Q. Not within 3?

A. I should say it depends more upon the bearing of the vessel.

Q. It would be perfectly clear if within 2 points?

A. There would be certain indications from the stern to the bow; you could look beyond; certain indications that would give you to a quarter

of a point within 2 points, but the matter of the spread between masts, that is a very definite thing.

Q. Would you see the masts at 17 miles?

A. Yes.

Q. What is the ordinary diameter of a mast at the top?

A. She has not only the sticks up and down, but the crosspieces, and she has certain irregularities in the shape of the masts, and they are usually black.

Q. How far would they be visible above the horizon; 17 miles?

184 A. You have heard the expression hull down; the masts are in sight, the horizon is usually 15 miles to the average eye; that would be 15, 16, or 17 miles the vessel would be in sight; only the masts in sight; therefore her masts could be seen when the hull was down.

Q. You would see two sticks 5 inches in diameter at 17 miles?

A. Oh, they are more than 5 inches at the top; they begin at a width of 14 inches and taper off.

Q. You would see them 17 miles away?

A. She is hull down at 15 miles below the horizon; therefore she is more than 15 miles; I therefore claim you can see it 17 miles.

Q. You have not answered the question. Can you possibly see the masts of the vessel 17 miles away?

A. If thick enough.

Q. How think should they be; 7 or 14 inches think 17 miles away?

A. Yes; with my glasses.

Q. You could not see 4 miles with the naked eye?

A. I could see a vessel 10 miles with the naked eye.

Q. Are you familiar with these tables [indicating]?

A. I have been familiar with them.

Q. Will you again state how the Morro bore at the time of the final capture?

A. The Morro bore when the capture took place—when I fired the gun——

Q. No; when you stopped and the ships came together?

A. The Morro bore southwest 7⅞ miles.

Q. Did you not testify when you first saw the "Olinde Rodrigues" the Morro bore southwest by west?

185 A. That is somewhat near the bearing; Morro had borne 15 miles distant southwest in the early morning; I ran south before seeing the "Olinde Rodrigues" from that position 3 miles, and while lying there——

Q. What bearing would that be?

A. Somewhere about southwest by west; all this is extremely doubtful when *she* got so near together; it is even more difficult for him than for me, because he had not the objects of that locality as a fixture.

Q. He was going in and out of that port for years?

A. Yes; but he never measured the distances. He would run so far down the coast and order them to steer to a certain point to head in, but as to fixing his distance from the Morro every hour of the day and half hour, as we did, and when guns are going to shoot at you, it does not compare with my position.

Q. Have you the log with you?

A. We brought a copy of the log.

Q. Is the navigator here?

A. No; he is not here. I wanted to bring the whole ship up, but nobody can state the distance of a vessel from the north coast of Porto Rico.

Q. If you took a 4-point bearing from Morro wouldn't you know?

A. This gentleman was not in any such distance as that.

Q. Couldn't you take a 4-point bearing going down the coast?

A. No; he wouldn't have any 4 points; his distance from the land, the haze over the land, the early morning, there was nothing he could take hold of to fix his position with any accuracy at 8 miles.

186 Q. Could you see the Morro?

A. Perfectly clear.

Q. Why couldn't the captain see it?

A. You could take the Morro until you are blind and one point wouldn't do.

Q. Couldn't he take a 4-point bearing as he was running?

A. Yes; he has to depend on the patent log. He didn't do it that morning, though; he was too busily employed.

187 R. L. RUSSELL, sworn.

By the DISTRICT ATTORNEY:

Q. What position do you occupy in the Navy?

A. I am lieutenant, junior grade.

Q. On what vessel were you on the 17th July last?

A. Sailing on board the U. S. cruiser "New Orleans."

Q. Just state in your own language what occurred when you sighted the "Olinde Rodrigues," and when she was captured?

A. Between 7 and 8 a. m. on July 17th, while I was officer of the deck on the "New Orleans," one of the lookouts reported smoke. I looked myself in that direction and observed smoke evidently coming from a vessel to the westward of the position then occupied by the "New Orleans." The "New Orleans" was at that time lying to without headway to the northward and eastward of the Morro of San Juan. Shortly after sighting the smoke I was enabled, with the aid of glasses, to discern the two masts and one funnel of the steamer, and I reported both these facts to the commanding officer of the "New Orleans." The "New Orleans" was at that time waiting for a sailing vessel to the eastward of us, and which I had decided was standing to the westward. After making the report to the commanding officer that I could discern the masts and smokestack of the steamer and that she was heading in towards the harbor of San Juan, I received an order from the commanding officer to turn and head for the steamer. I then turned the "New Orleans" and headed for the steamer, and first headed west after reaching full speed. I also whistled down to the engineer on watch and told him to get up all the steam possible; that we were going to try

188 to cut off a steamer which was heading in for San Juan. About 8 o'clock, just before being relieved as officer of the deck, I changed the course to west half south, as the steamer was steadily drawing to the southward. Shortly after 8 o'clock, and after being relieved as officer of the deck, and while writing my log, I received directions from the commanding officer of the "New Orleans" to get the forecastle

6-in. gun ready for firing. I went down on the forecastle of the "New Orleans," had the clotheslines lowered, got up the stays, had the covers taken off the gun and reported all ready for firing. I received orders from the commanding officer of the "New Orleans" to fire the gun ahead of the steamer. I had the gun aimed about half a mile ahead of the steamer and at the extreme range for a powder charge and then had the gun fired. I observed the fall of the shot to be about half a mile ahead of the steamer. The steamer proceeded on her course, heading still for the harbor of San Juan, and I gave the order to reload the gun. There not being ammunition on the forecastle at that time, I was just about to unload the 6-in. below at the break of the forecastle to get the ammunition for my gun, when the steamer made a wide turn and headed towards the "New Orleans." I then received orders from the commanding officer of the "New Orleans" to be ready to board the steamer, and I went aft and got the "New Orleans'" boarding book and my side arms and got into the port whaleboat.

When the steamer had arrived in the vicinity of the "New Orleans," the whaleboat was lowered and I started in the direction of the steamer. When off the "New Orleans" and on my way to the
189 steamer, the commanding officer of the "New Orleans" hailed me and said he thought the steamer was the "Olinde Rodrigues" and to look in the back of the boarding book and see if she had not already been warned about entering San Juan. I looked in the back of the boarding book and found an entry stating that the "Olinde Rodrigues" had been boarded and warned by an officer from the "Yosemite" on July 5th, 1898. I called this fact out to the commanding officer of the "New Orleans," and he told me to notify the steamer that he would seize her for attempting to break the blockade of San Juan.

I then proceeded on my way to the steamer and boarded her, and after inquiries found that she was the "Olinde Rodrigues" and signalled that fact by wig-wag to the "New Orleans." I went down into the saloon of the steamer with the captain and purser of that steamer and demanded to see all the ship's papers; certain papers were furnished me said to be all the ship's papers. After examining them, I went on deck and looked down the cargo holds, and then signalled to the "New Orleans" asking for instructions. In the meantime I had had two wig-wag signals sent saying, that I had examined the papers and also the cargo. After sending my signal asking for instructions I was ordered by signals to have the "Olinde Rodrigues" remain where she was and proceed on board the "New Orleans" myself, and report.

I went on board the "New Orleans" and made my report, in substance the same as I had by wig-wag. I was directed to return on board the "Olinde Rodrigues," to take possession of her, and the papers of the ship and to proceed with the ship and papers to Charleston, S. C.,
190 and to turn them over to the U. S. prize commissioners at Charleston, S. C.

On my return to the "Olinde Rodrigues" with my prize crew, I went down into the saloon to get the papers and at this time an additional book, not before furnished me, was given to me, called Le Journal des Officiers. After telling the captain of the "Olinde Rodrigues" that he would have to go to Charleston for attempting to break the blockade he

demurred, saying he did not have enough coal; he also demurred on the ground of food supplies; he also said that he had no charts or sailing directions for going to Charleston, S. C. After sending my signals to the "New Orleans," and receiving further instructions from the commanding officer and one chart, I directed the "Olinde Rodrigues" headed for Charleston, S. C.

The voyage from the vicinity of San Juan, Porto Rico, to Charleston, S. C., passed without incident of special mention, except that at one time it was attempted to remove the navigating instruments on the ground that they were the private *of* property of the officers. Upon arrival at Charleston, I notified in writing, the U. S. prize commissioners at Charleston, my arrival with the prize steamer "Olinde Rodrigues" and turned the vessel over to the U. S. marshal, two of whose deputies came on board that day and took possession.

Q. You spoke for the log when you first went on board when you asked for the ship's papers?

A. Yes.

Q. What papers were delivered to you then?

191 A. I can't remember; you will find the list in the inventory of the papers I turned over to the prize commissioners.

Q. Did you ask them for the log at that time?

A. Yes, and I received what I understood to be the log, which was that Rapport du Mer.

Q. Is that it [indicating]?

A. Yes.

Q. Tell us all the particulars about what you say they afterwards produced as the log; did you explain to them; can you speak French?

A. To a very limited degree.

Q. Did you explain to them what you meant by the log?

A. Probably not very plainly.

Q. What were the circumstances under which they did deliver this book finally; they did deliver it to you?

A. They delivered it with the ship's papers when I demanded the ship's papers on the second occasion.

Q. How long was that after you had been first on the vessel and called for the ship's papers?

A. About 3 hours.

Q. Did you examine this log in regard to the enteries?

A. I made a casual examination of it.

Q. Look at that and see if that is it. #1 Journal des Officiers, already in evidence before the prize commissioners, signed Edward McCrady.

A. That appears to be it.

Q. On the second occasion when you went on board and demanded the ship's papers did you call for that particular book any

192 more than you had in the first instance?

A. In both cases I called for all the papers; during the first examination I simply examined the papers, made no inventory to see they were all right; on the second occasion I examined the papers to seal them up to bring them to Charleston to the prize commission's. Not being familiar with the log kept on French merchant ships, I was given

to understand that the Rapport du Mer was the log, and in that the "Yosemite's" boarding visit was entered. It is required to be entered in the log; the log book with the columns was not furnished until 3 hours afterwards.

Q. What time was it when you first went on board?

A. In the neighborhood of 8.30 or 9; some time between 8 and 9. I did not take the time and only can give a rough estimate—quarter past 8 or 9.

Q. And about 3 hours later you went on board?

A. Between 11 and 12 I went on board to take possession of the ship and the ship's papers.

Q. Did you at that time examine the record in this log book?

A. I made a casual examination—glanced over it. I can change that to I did examine it; it amounted to examining it.

Q. Did you find anybody on board that spoke English?

A. The purser of the steamer "Olinde Rodrigues" acted as interpreter between the captain of the "Olinde Rodrigues" and myself on both occasions referred to.

Q. Did you hear any conversation you understood between the parties?

A. I heard the purser of the steamer "Olinde Rodrigues;" he asked me what was the speed of the "New Orleans," and I told him
193 that she could make 21 knots; I heard him mention that fact to the captain at some distance from me, and he also said what I understood to be the remark, "that she could very easily have caught the "Olinde Rodrigues."

Q. When you first saw this vessel, first saw the smoke, in what direction did she bear from the "New Orleans?"

A. When I first saw it about west half north.

Q. You left the deck shortly after 8 o'clock; do you know what was the bearing of the "New Orleans," what course she was steering when you left the deck?

A. West half south.

Q. And what direction was the "Olinde" bearing from her at that time?

A. West half south.

Q. You were steering then directly for the "Olinde Rodrigues?"

A. Yes.

Q. Could you tell about what distance she was from you when you first saw her?

A. It would be only an estimate.

Q. How much of her could you see?

A. I first saw the smoke without the vessel; I next saw the masts and smokepipe, and next the whole broadside of the vessel.

Q. You saw the whole broadside before you left the deck?

A. Yes.

Q. Could you tell the course that she was steering?

A. Within a small limit; yes.

Q. What course was she steering at that time?

A. About south southeast; I observed her very carefully when
194 we headed for her in the direction west and made up my mind that she was heading about those points from my course.

Q. And did she change her course from the time you sighted her before you left the deck?

A. No; not a particle.

Q. Kept on the same course?

A. Kept on the same course.

Q. When you fired this shot, how long was it after the shot struck in front of her before she changed her course?

A. It was long enough for me to give the order to load the gun, to go to the break of the forecastle to give the order to unload another gun and two or three times repeat the order to hurry up, and finally I observed she had changed her course; the actual number of seconds I could not state, except as a guess; those were the orders given one after the other.

Q. Could you tell anything about her steaming; whether or not she was going at full speed?

A. I saw she was apparently making all the speed possible, or attempting to do so, by the volume of smoke emitted from her funnel.

Q. When did you first notice that?

A. Shortly before I left the charge of the deck; there was a visible increase of firing from the time I first observed the smoke until I left the deck, which indicated heavy firing below.

Q. Now, when she changed her course to go towards the "New Orleans," how much of a change did she make in her course?

A. I should say at that time several points.

195 Q. What was her bearing from the "New Orleans" when you fired the shot?

A. I was not officer of the deck or in the immediate vicinity of the compass, so am unable to state the exact course at that time.

Q. How much did she change her course when she turned?

A. I should say about 4 points, or more than 4 points.

Q. What distance was she from the "New Orleans" when you fired?

A. About 5 miles; between 4 and 5 miles.

Q. And you fired, you say, a shell?

A. Yes.

Q. How did the shell strike relative to the "Olinde Rodrigues?"

A. It struck about half a mile ahead of the "Olinde Rodrigues?"

Q. After you fired the shot what course did your vessel take?

A. I went aft to get my boarding book and side arms and did not watch the movement of the vessel; but she must have stopped, as I was lowered in the whale boat soon after, and at that time the ship was stopped.

Q. How long was it from the time the "New Orleans" was headed towards this vessel until the shot was fired?

A. About 23 minutes; about 20 or 25 minutes.

Q. Do you know the speed of the "New Orleans" at that time—about the average speed during the chase?

A. I could not say.

Q. You say you brought the "Olinde" up as prize master?

A. I did.

Q. What speed does she make?

A. On the trip up she made slightly over 10 knots until the *the* last day of the voyage.

196 Q. By urging she could make that?

A. No; easy steaming.

Q. When you saw her what was her direction, the direction in which she was going as related to the Morro Castle?

A. She was heading very slightly to the west of Morro Castle.

Q. How long did she keep that course under your observation?

A. Until after the shot was fired by the "New Orleans?"

Q. Then you say she changed her course something like 4 points?

A. More than 4 points.

Q. Do you know what your distance was from the Morro at the time you hove to after firing the shot?

A. Between 7 and 8 miles.

Q. And what would you call her distance at that time, when you fired the shot, from the Morro?

A. Her distance was about the same?

Cross-examination by Mr. GOVIN:

Q. Did you speak to Captain Folger after he left the witness stand?

A. I don't know when he left the witness stand.

Q. About 15 minutes ago?

A. I spoke to him after he left the stand, I think.

Q. What did you say to him?

A. I don't remember now.

Q. What did he say to you?

A. I don't remember.

Q. Taking the line north and south from Morro Castle, on which side of that line were the "Olinde Rodrigues" and the "New Orleans" when they came together? Were they east or west?

A. My recollection is they were very nearly on the line.

197 Q. Look at that plan which is handed to you, annexed to the testimony which was taken de bene esse. Is that your plan?

A. Yes.

Q. Where do you locate on that plan the "Olinde Rodrigues" and the "New Orleans" when they came together?

A. About on the north and south line, about the entrance of San Juan.

Q. How far from the north and south lines?

A. About north and south of the point where the "Olinde" was heading.

Q. How far west from the line of the Morro did you locate the two vessels? I correct my question.

A. I stated in testimony all bearings after 8 a. m. were simply from the eye, and at the time the ships came together I was engaged in getting the boarding book and things together.

Q. When you gave that testimony didn't you know that this testimony was important as to whether or not you had further proof?

A. If you read my testimony you will find I stated the bearings on the diagram after 8 a. m. were simply by the eye. Before that they were taken by the compass.

Q. Didn't you know they were to be material evidence—to be as careful as you could make them?

A. Yes.

Q. How far is the position on that chart from the lines north and south of the Morro Castle is the "Olinde Rodrigues?"

A. They are on the line north and south from the point of entrance, where the "Olinde Rodrigues" was heading.

Q. Repeats question.

198 A. About 1¼ miles west.

Q. If the testimony of Captain Folger should be that the "Olinde" and the "New Orleans," when they came together, were east of the line of Morro Castle, which is correct, your statement or his?

A. That is for the court to decide.

Q. What is your opinion?

A. That is for the court to decide.

Q. You must certainly have some opinion about it.

A. My opinion is that Captain Folger's opinion would be better than mine. He was on the bridge at the compass, while I was down in the forecastle without a compass.

Q. What time did you come on deck the morning of the 17th July?

A. I had slept on deck all night. My watch was from 4 to 8 a. m.

Q. Where was the "New Orleans" at 4 o'clock in the morning?

A. On the blockade of San Juan, Porto Rico, to the westward of the Morro.

Q. What was her exact position?

A. I don't know.

Q. Westward of the Morro?

A. Westward of the Morro.

Q. If Captain Folger should locate that 18 miles from the shore, east of the Morro, which would be the correct testimony, do you think?

A. If he had taken bearings I should say Captain Folger. I went up in the dark, and was told the ship was to the westward of Morro.

Q. How far from the land?

199 A. I don't know.

Q. How far west from the Morro?

A. I don't know.

Q. How did Morro bear from the ship?

A. Not in sight.

Q. Was there any light?

A. I don't think there was.

Q. Do you know of your own knowledge where the "New Orleans" was?

A. No.

Q. Where were you when you first sighted the square-rigged bark?

A. To the north and eastward of the Morro.

Q. Had you been lying still from the time you came on deck until you sighted that bark?

A. No, I had been walking around the bridge.

Q. Had the ship been drifting and still between the time you took charge of the deck and sighting the ship?

A. The ship had steamed to the eastward.

Q. Was she steaming at full speed?

A. No; about half speed.

Q. What was her course?

A. East, as well as I remember now.

Q. Where was the "New Orleans" when you sighted the smoke of the "Olinde Rodrigues?"

A. To the northward and eastward of the entrance of San Juan.

Q. The entrance of San Juan or the Morro?

A. Both.

200 Q. Can you see the entrance of San Juan?

A. Yes.

Q. What is it like?

A. A body of water stretching between the Morro and the land on the opposite side.

Q. How wide is it?

A. About 1 or 2 miles.

Q. Can you take bearings from a body of water 1 or 2 miles wide?

A. Yes.

Q. What was the bearing of the Morro Castle from the "New Orleans" at the time you sighted the smoke?

A. I don't know the exact bearing. We were to the northward and eastward, the Morro bearing to the southward and westward.

Q. How far from land were you?

A. I should say about 9 miles.

Q. How was the weather?

A. Clear and fine.

Q. Any haze on the land?

A. I don't remember any.

Q. If there had been any, would you have remembered it?

A. Not necessarily.

Q. Why do you say clear and fine?

A. Sun shining.

Q. Sky clear?

A. As I remember, yes.

Q. Did you look towards the land and see any haze?

A. I don't remember seeing any.

201 Q. Who was at the wheel?

A. I don't remember.

Q. You don't know what was the position of the "New Orleans" at the time that you sighted the smoke of the "Olinde Rodrigues" except as you have stated?

A. I do.

Q. What was the position?

A. At a point to the north and eastward of the Morro, about 9 miles from shore in the nearest direction.

Q. How would Morro bear?

A. To the southward and westward.

Q. Did you take bearings then?

A. No.

Q. How did you fix that point?

A. Because I looked at the Morro and I knew how we were heading, and I heard the navigator take bearings, and I was familiar with the locality all around that harbor.

Q. You heard the navigator?

A. No, I did not hear the navigator; he was not on the bridge at the time; some time before I had been discussing with the navigator and

sent a report to the commanding officer; that report was, Morro bearing southwest; I don't remember the exact time; it was about 7 o'clock.

Q. Were you under steam at 7 o'clock?

A. Steam was up in the boilers.

Q. How long did it take you to start—to get any headway?

A. About a couple of minutes.

Q. When you saw the smoke of the "Olinde" where was your
202 ship heading?

A. To the northward and slightly to the eastward of north.

Q. How was the smoke bearing from you?

A. About between west half north and west by north between those two points.

Q. Could you tell from the smoke in what direction the ship was sailing?

A. No, I could only see the smoke; how it was bearing that could be influenced by the wind; I reported smoke in sight bearing between west half north and west by north.

Q. What order was given then on the "New Orlenas"?

A. No order.

Q. What did the "New Orleans" do?

A. Nothing.

Q. How long did she remain doing nothing?

A. Until I received an order.

Q. What order was that?

A. After reporting that I could see the masts and funnel of a steamer I received an order from the commanding officer of the "New Orleans" to head for the steamer.

Q. How far off was the steamer then, in your estimation?

A. At that time, I should say 11 or 12 miles.

Q. She was not 17 or 15?

A. Not in my judgment.

Q. When you first saw her did you see both the masts and the smoke-stacks?

A. No; I first saw the smoke and then I saw the masts and the funnel.

203 Q. At the same time?

A. Yes.

Q. Are the masts higher than the funnel on the 'Olinde Rodrigues?"

A. Yes; much higher, but the funnel is more prominent.

Q. Could you see at that distance and that particular time, whether the masts were open?

A. I saw that they were open.

Q. What time was that?

A. That was near 7.50.

Q. How long after you saw the smoke?

A. I don't remember.

Q. What time did you see the smoke?

A. I don't remember, between 7 and 8 o'clock.

Q. Was it nearer 8 than 7?

A. Yes.

Q. Was it half past 7?

A. Yes.

Q. Twenty minutes to 8?

A. I don't remember.

Q. You can't tell within half an hour when you saw the smoke?

A. Yes; between 7.30 and 7.50.

Q. That is as near as you can get it?

A. I should say it was nearer 7.45 than any other time I could now state.

Q. How many minutes after did you see the masts?

A. I could see the masts with the aid of glasses probably about 3 minutes later.

204 Q. Do you know what course the ship was making?

A. After watching her some time and observing her steaming, and watching our course and compass, I determined she was steaming about south-southeast in my judgment.

Q. How long did it take you to make up your mind how she was pointing?

A. About 5 or 6 minutes.

Q. How far was she then from you?

A. About 11 or 12 miles.

Q. Can you tell within 4 degrees how a ship is heading at that distance at sea?

A. Within 4 degrees? No.

Q. How was the "Olinde Rodrigues" steering when she came towards you after the shot was fired?

A. I don't know, as I did not go to the compass; I should say, roughly judging from the eye, she was steering in an easterly direction.

Q. As a matter of fact, the plan you annexed to your testimony you do not consider accurate?

A. After 8 a. m. I was not at the compass and the bearings are not as accurate as if taken from the compass.

Q. Then the testimony after 8 a. m. of the bearings of the respective ships and the bearings of Morro light are also more or less guesswork?

A. I did not see any light on the Morro at 8.

Q. From Morro light-house.

A. I did not see the Morro light-house, I indicated from the buildings around.

205 Q. Were any bearings taken from Morro on board that you know of?

A. Yes.

Q. How were they taken?

A. From the centre of the buildings of the Morro.

Q. Well, is not that the Morro?

A. Not the light.

Q. You know perfectly well I was referring to the Morro?

A. I don't know anything except what you say.

Q. The testimony you gave de bene esse and the plan annexed, are they absolutely correct or are they more or less guesswork—after 8 a. m.?

A. As correct as it is possible for me to make them at this time.

Q. At the time that the two ships came together how did the Morro bear from them?

A. I don't remember.

Q. You made a diagram of it and stated in your testimony, you marked the positions that the two vessels occupied by indicating on the plan "N. O." for "New Orleans" and "O. R." for the "Olinde Rodrigues," and you further say "a place about 7⅔ miles to the northward and westward of San Juan," does that refresh your memory?

A. I would like to read what is stated after that. "After 8 a. m. and until I was ordered to board the "Olinde Rodrigues," I was down on the forecastle and could only estimate the position and distances by the eye."

Q. When the ships came together you went on board the "Olinde Rodrigues"?

A. Yes.

206 Q. When the final order was given you to proceed to Charleston, what bearing did you take to fix your course?

A. I didn't take any.

Q. Did you attempt to navigate the vessel?

A. No, the captain navigated her.

Q. So you don't know where you were?

A. I do, I took observations from day to day, as a check on the captain and officers.

Q. You said a moment ago you didn't know where you were?

A. I did for all reasonable limits, I was to the northwest of San Juan, about 8 miles.

Q. Did you take any bearings?

A. No, I could tell by the eye.

Q. When was the first observation taken by you after the ship started for Charleston?

A. I don't remember.

Q. Was it taken the same day?

A. I don't remember.

Q. Was it taken at all?

A. I don't remember.

Q. When was the first observation you took?

A. I don't remember.

Q. Was it on the same day?

A. I don't remember.

Q. Did you make any note of it?

A. I marked out the sights when I made the observation.

Q. Where are they?

A. I haven't got them.

207 Q. What position did you find yourself in when you took that first observation?

A. I don't remember.

Q. Didn't you know where you were going to?

A. I had my orders to go to Charleston, S. C., and I went to Charleston, S. C.

Q. You directed the captain to go?

A. No; I went to Charleston.

Q. Did you navigate the vessel?

A. I carried the vessel to Charleston.

Q. That does not answer the question, did you navigate her?

A. Explain what you mean by navigate.

Q. Did you take the observations and direct the course of the vessel?
A. I took observations.
Q. When did you take them?
A. I don't remember.
Q. You mean to say you don't know whether you took them on one day or another day, or in the forenoon or the afternoon?
A. I took the observations only as a check upon the officers of the steamer and my assistant.
Q. What were the first observations; where were you when you took your first observation?
A. I don't remember.
Q. Why did you destroy your memorandum?
A. Because after the arrival at Charleston they were useless; after taking they were useless. I had no navigating book and kept no permanent record.
208 Q. Didn't you know the question whether this ship was a prize or not would be determined by her courses?
A. I did not. We were going to cross the Gulf Stream with a current and we were going to arrive at Charleston. My only object was to arrive at Charleston.
Q. At the time of the capture—that is to say, when the two vessels came close together—was the "Olinde" between the land and the "New Orleans," or the "New Orleans" between the land and the "Olinde?"
A. The "Olinde Rodrigues" came up to the "New Orleans" on the landward side, but she was sent round to the seaward side.
Q. If Captain Folger's testimony should be that when she came to the "New Orleans" she came from the north that would be a mistake?
A. That would have nothing to do with it. She came up to the "New Orleans" on the landward side; when I boarded her she was to the shoreward side of the "New Orleans."
Q. What direction did she take in coming towards the "New Orleans" when your cannon was fired?
A. In an easterly direction.
Q. Easterly?
A. Yes; easterly direction.
Q. What was the course of the "Olinde Rodrigues" at that time?
A. I think she was steering in an easterly direction; at that time I was busy lowering the boat.
Q. Before that, right after the shot was fired, while you were waiting for the command to fire again?
209 A. She was heading south-southeast; she hadn't turned; she hadn't altered the course.
Q. When she turned, what course did she take?
A. About east-southeast.
Q. How could you tell which way the "Olinde" was sailing?
A. By looking at her.
Q. How?
A. Looking at her, just as I can tell whether a man was driving a carriage up the street or down the street.
Q. Could you tell at a distance of 9 or 10 miles whether her course was in 4 or 5 degrees of any point?
A. No; not 4 or 5 degrees.

Q. Have you any idea what her course, the "Olinde Rodrigues," would be in running from the point where you saw her to the Virgin Passage?

A. I have not laid it off.

Q. Have you any idea?

A. No; I couldn't make a statement without laying it off.

Q. When you saw her close you could determine what her course was. Was it not south 69 east, or about south?

A. Her course was—no, it was south-southeast.

Q. How far was she then from a line running north and south from Morro Castle?

A. I don't know.

210 CHARLESTON, *September 16, 1898.*

J. R. Y. BLAKELY, sworn.

By Mr. BRYAN:

Q. You are in the United States service?

A. Yes; on the U. S. cruiser "New Orleans."

Q. What is your position?

A. Watch and division officer.

Q. On the morning of the 17th July where was the ship?

A. She was off San Juan, on blockade duty.

Q. Where were you from 4 o'clock till 8?

A. I was not on deck.

Q. When did you come on deck?

A. Precisely at 8.

Q. What hour was your duty?

A. I go on deck and relieve the deck at 8, take charge of the deck.

Q. When you came on deck, state what you saw?

A. Shortly before 8 I could hear the engine moving, and when I came on deck I saw two ships in sight, one a bark, sailing vessel, to the eastward, and a steamer to the westward. The ship had just been put on a course west one-half south. I saw the compass myself, and at that time the ship was directly ahead of us—the bearing was west one-half south—this steamer "Olinde Rodrigues," as it afterwards proved to be.

Q. At that time what was the apparent distance, according to your judgment, of the steamer from the cruiser?

A. About 9 miles.

Q. What was her bearing?

211 A. West, one-half south.

Q. Were you heading directly for the steamer?

A. Yes, and she was directly ahead.

Q. How long did you continue on that course; did you change that course?

A. A very short time; about a couple of minutes.

Q. To what did you change?

A. Half a point to the southward or quarter of a point.

Q. How long did you continue on that course?

A. A very short length of time; then we swung in again going half a point to the southward, and then again to the southward, a continual increase of change to the southward.

Q. How often did you change to the southward—I mean the points?

A. I don't know how many times; about 3 points.

Q. What was the course of the cruiser when you fired the shot; the final course?

A. About southwest by west.

Q. How long had you been running before you fired?

A. About 15 minutes; very close to 15 minutes.

Q. That is after you came on deck?

A. Yes; after I came on deck, 8.15.

Q. How long did you observe the steamer before you fired the shot?

A. About 15 minutes; this same interval.

Q. During that 15 minutes had the steamer changed her course?

A. Apparently not in the least.

Q. What was her course?

A. Her course was southerly.

212 Q. In what direction was she heading?

A. Heading apparently for San Juan; about for San Juan harbor entrance.

Q. Was she heading or not for the land?

A. She was heading for the land.

Q. Was it possible from her direction on that course to have gone clear of the land?

A. Absolutely impossible.

Q. As to the position of her masts how were they?

A. Wide open.

Q. How were they when you first observed them?

A. The same.

Q. How were they when you last observed them at the time you fired the shot?

A. They were the same until shortly after we fired the shot. When the observation was made she is turning, and we all carefully watched her with glasses and saw her go through the change from wide open to closing gradually until she finally headed for us.

Q. After she headed for you what was her course in coming towards the cruiser?

A. It seemed parallel with the coast line, about east.

Q. How far off was she from the cruiser when you fired the shot?

A. We were about 4 or 4½ miles, I should say.

Q. How was the morning as to atmosphere?

A. It was rather clear; it would be logged as clear.

Q. When she came down how was her smoke?

A. When I first came on deck it was remarked, during our

213 steaming, between 8 and the time she turned, by the volume of smoke pouring out, that the firing must have been great to send out such black volumes of smoke.

Q. Did you yourself take any bearing that morning?

A. None except the first one I spoke of. It was not a bearing, alidade by coloris, but seeing the ship ahead and looking at the compass was the only bearing I took; west, one-half south.

Q. When the shot was fired was the "New Orleans" under way?

A. She was.

Q. How long had she been under way?
A. I don't know what time she commenced to steam.
Q. Since you had been on deck?
A. About 15 minutes.
Q. After the shot was fired what did she do?
A. Continued to steam until the steamer turned, and then the forced draft was taken off, and then we were slowed to half speed, or at any rate we slowed and finally stopped.
Q. Waiting for what?
A. The "Olinde Rodrigues" to come up.
Q. On what side did the "Olinde Rodrigues" come up to you?
A. Came up on our port side.
Q. How were you heading at that time?
A. To the westward; came up on our inshore side.
Q. At the time the two vessels came together were any particular bearings made on the ship?
A. As soon as the "Olinde Rodrigues" came close to us I heard the captain tell the navigator to take particular and careful observa-
214 tions of the position of the ship at that time, make careful note of them; and I saw the navigator take them.
Q. You did not take them?
A. No.
Q. What is the name of the navigator?
A. Lieutenant Rooney.
Q. When the "Olinde" was taken possession of what was her position in relation to the position of the cruiser?
A. When she first came alongside the port side, about a ship's length away, inshore of us.
Q. Where was she when taken possession of?
A. Taken possession of covers some hours; I don't quite understand.
Q. Did she change that position afterwards and come up on the other side?
A. Yes; she took a position to the eastward of us.

Cross-examination by Mr. GOVIN:

Q. At what hour did you say the "New Orleans" was off San Juan?
A. She was off San Juan all the day.
Q. Did you say that she was off San Juan about 4 o'clock on the morning of the 17th?
A. No.
Q. At what hour of the morning was she off San Juan?
A. Off San Juan means she was off the port; she was off all day.
Q. Was she there in the morning?
A. At 8 o'clock, I know.
Q. Before 8 you don't know where she was?
A. I don't know.
215 Q. How was San Juan bearing at 8 o'clock when you came on deck?
A. San Juan bore about southwest, although that was not a bearing taken by myself, but from my familiarity on blockade duty and knowing the coast line—about southwest.

Q. As a naval officer and nautical man, you don't know anything about it positively; you don't know anything accurately?

A. If you mean within a degree, no; not precisely.

Q. Was the "New Orleans" ever west of the line north and south through Morro that morning that you know of—west of the line north and south?

A. You mean between 8 a. m. and meridian? During that watch she was not to the westward of the north and south line from Morro.

Q. Did you hear whether she was before that time?

A. No.

Q. You have testified that you knew, because of your knowledge of your duty during the blockade, where she was about San Juan, but you don't know that she was west of a line north and south at any time during that morning?

A. I said my familiarity on blockade duty made me capable of making a compass bearing.

Q. How does familiarity on blockade duty help you more than you knew before in making an estimation of the sea and the course the vessel was steering, etc.?

A. You see, lying off a port and seeing the different lines along the coast you learn them and learn the coast and can tell.

Q. Would that give you the course of the ship without bearings?

216 A. It would permit you to make a close estimate of the compass bearing.

Q. How close? Within 2 or 3 miles?

A. Bearings are not taken in miles.

Q. How close—the course of the vessel I am asking?

A. And the courses are not in miles; they are points and degrees.

Q. How close could you estimate the course of a vessel 8 or 10 miles?

A. I think I could estimate it—her course relative to our course—within 2 points on any course, and when the course diverges from ours by right angles I think I could tell within a point.

Q. Do you know what the course is for a ship leaving Porto Plata destined for the Virgin Pass?

A. No.

Q. Why did you say this vessel was heading for San Juan?

A. Heading about for San Juan.

Q. You correct the previous statement to say about San Juan?

A. She was heading very close in a direction which would have taken her certainly to San Juan.

Q. Tell me how you make up your opinion as to that, what facts?

A. The fact that her masts were wide open, and the appearance of the ship as viewed from our ship.

Q. What do you mean by appearance?

A. The appearance of the hull and the masts and the smokestacks.

Q. Could you see the hull at 9 miles?

A. You might see the upper works, I think.

217 Q. I am asking about the hull.

A. The upper part of the hull, I think.

Q. How much of the upper part of the hull?

A. I think the rail.

Q. Could you really see enough of the ship to tell where she was going at 9 miles?

A. You could tell the course relative to the course of your own ship very closely.

Q. Do you know how far a ship must pass off San Juan to go to the Virgin Pass?

A. No.

Q. If the "New Orleans" had been 18 or 20 miles to the north of the shore and the "Olinde" were going on a course almost parallel to the shore about 8 miles off, wouldn't her masts have appeared open to you on board the "New Orleans," you being north of her courses converging to a point?

A. And the "Olinde" steaming east? Yes; her masts would have been open.

Q. So the fact that you saw the masts open without positively knowing your position does not really tell you what course she was sailing; a change in your position would naturally change the course of the "Olinde" as it appeared to you, is not so?

A. The change of our position a few miles—the distance of the "Olinde" from us at the time of the change—a few miles is a very important fact.

Q. Assuming 10 miles away?

A. Assuming 10 miles, a change of a few miles would make a change which would not be very large.

218 Q. You say they seemed to be paying attention to the firing?

A. Unusual firing.

Q. How do you know that?

A. Apparently unusual.

Q. Do you know what coal the "Olinde" burns?

A. No.

Q. Don't you know there is a difference in the volume of smoke in different grades of coal?

A. Oh, yes.

Q. If the steamer had her dampers closed wouldn't it make more smoke?

A. It might, and it might not.

Q. You really don't know?

A. I wouldn't care to give an accurate opinion.

Q. At 8 o'clock where did you say the "New Orleans" was?

A. She was about northeast from the entrance of San Juan.

Q. How far from land?

A. About 14 or 15 miles, and certainly not over 16—certainly not over that.

Q. Why do you say certainly not over 16 miles from shore?

A. From the appearance of the Morro in my mind, she was certainly not, from any atmospheric condition, over 16 miles.

Q. Not from your mind; I want facts.

A. From the appearance of the Morro.

Q. Any haze over the land?

A. Very slight, if any.

Q. Could you see the land distinctly?

A. Yes.

219 Q. Wouldn't a slight haze interfere with your view of the land at 15 or 16 miles?

A. It would interfere with a clear view, but that mist would be taken into account.

Q. How do you take into account?

A. Why, I simply look at the conditions and grasp the condition.

Q. Did you make yourself nearer or further away on account of the haze; did the indistinctness of the objects on shore convey the idea that you were nearer or further because of the mist?

A. I did not put down the different things taken into account in making my estimate.

Q. Did you verify your position by any other means than this general estimate you have made?

A. Personally, no.

Q. Did you order anybody to do so?

A. No.

Q. Why did you use the word personally?

A. Because you asked me.

Q. You said personally, no; did somebody else do it?

A. No; the positions were taken by the navigator.

Q. I want an absolute statement that you did or you did not.

A. I say no; I personally did not.

By the COURT.

Q. How long had the "New Orleans" been on blockade station prior to the 17th?

A. 3 days.

220 By Mr. GOVIN:

Q. Are you a graduate of Annapolis?

A. Yes.

Q. Are you familiar with the currents off Porto Rico?

A. I am familiar with it during the months of July and August, I think.

Q. How do they run?

A. The current sets towards the eastward.

Q. Are you familiar with these hydrographic charts?

A. Yes.

Q. How is the current indicated on that chart as running?

A. Indicated as setting to the westward.

Q. Then you are mistaken in saying the eastward?

A. No; during the months of July and August my observation is that the current sets to the eastward.

Q. Here they say set to the westward?

A. Yes.

Q. You set your opinion against the charts of the Government; I ask you do you set your opinion as an officer of the Navy against this chart?

A. I don't wish to change my testimony.

Q. You observe that the current goes to the eastward?

A. That has been my observation; yes.

In reply by Mr. BRYAN:

Q. The counsel has asked you as to your observation of the "Olinde" at a distance of 9 miles before the "New Orleans" fired the shot; how near had the "Olinde" approached the "New Orleans?"

A. At about 4½ miles.

221 Q. That was also a point of observation?

A. Yes; the point of observation of estimate, an estimate aided by the fact that the shot was fired at a range of 7,500 meters and fell a certain distance very close to her.

Q. What was her course as observed by you just before that shot was fired, the same course she had been on before?

A. The course seemed to be the same.

Q. What was the actual course just before the shot was fired as seen by you?

A. Her course was about southward.

Q. Heading in about what direction?

A. About south as it appeared to me.

Q. When that shot was fired, how were the masts of the "Olinde" seen from the "New Orleans?"

A. Wide open.

Q. After the shot was fired and she turned and approached the cruiser, in what direction did she come up to the cruiser?

A. Directly for us, and on a course that was about parallel to the coast line.

Q. I ask you to look at that diagram; when you say at a distance of 4½ miles her masts were wide open, what do you mean by wide open?

A. As far apart as they could be.

Q. If she had been on a course south 69 east, would her masts have been as you saw them?

A. By no means.

Q. Could it have been in any possibility as you saw them?

A. No.

222 Q. If she had been on a course south 69 east, what would have been the appearance of her masts for a distance of 4½ miles?

A. Her masts would have been nearer together than wide open, partly closed towards each other.

By Mr. GOVIN:

Q. Her masts still would have been open?

A. Yes.

Q. Does not the term open mean that the masts are open one from the other; that they are not on end?

A. Yes; it means that and not in line; open.

Q. Two vessels dead ahead meeting end on and one changes its course, say 5 degrees, wouldn't you see the masts open?

A. Five degrees?

Q. Yes.

A. They might open a very small amount.

Q. They would open?

A. A very small amount.

Q. If they are head on they must open whenever there is a change.

A. They would open a very small amount, half a point.

By Mr. BRYAN:

Q. The change of course would be the change of course of the vessel with the masts?

A. Yes; of the vessel approaching, the vessel you are watching.

Q. The changing of the course of the "New Orleans"——

A. The change of our course would have nothing to do except in the change of position; the turning our vessel round wouldn't have changed the opening of the masts in any degree.

223 By Mr. GOVIN:

Q. If she moved her place it would?

A. If she changed her place.

Q. The "New Orleans" did not move around in a circle?

A. You are asking in reference to the last question?

Q. Your answer did not refer to the "New Orleans?"

A. No; it was merely a naval question.

224 C. P. NELSON, sworn.

By Mr. BRYAN:

Q. In July, 1898, what ship were you on?

A. The U. S. cruiser "New Orleans."

Q. Are you a graduate of Annapolis?

A. Yes.

Q. In what capacity were you going with the "New Orleans?"

A. I was naval cadet; I don't know in what respect you mean.

Q. What was your position on board the ship?

A. Junior division officer.

Q. On the morning of the 17th July where was the "New Orleans?"

A. She was blockading off the port of San Juan, Porto Rico.

Q. What time did you go on deck that morning?

A. About 7 o'clock, I should judge, although I didn't look at the time.

Q. What was your duty on deck?

A. No especial duty; I merely came on deck hearing we were in chase of a steamer, and I came up to see the chase.

Q. Where did you go?

A. Into the forward military top, in company with two other cadets.

Q. How far above the bridge is that point of observation?

A. I judge about 12 feet.

Q. What time did you go there?

A. I couldn't tell exactly the time; it was probably about quarter after 7.

Q. Where was this steamer at that time?

A. She was bearing about west by north just on our starboard bow, and we had just started after her.

225 Q. What was the course of the "New Orleans" at that time?

A. I don't know the course; I was not observing the compass; from what I could observe with respect to the land, and knowing our position there, I judge somewhere pretty nearly west, or maybe a little south of west.

Q. When you first observed that steamer, what did you see?

A. When I first observed her she was heading apparently right in shore; she was some distance off then; we were 10 or 12 miles from the Morro and considerably to the eastward of the Morro; we had gone there in chase of a Swedish bark, and when we saw the steamer she was apparently heading inshore; she seemed to be almost north of the entrance of San Juan and, from what we could see from the positions of her masts and the broad side of the vessel exposed, very nearly south; maybe a little to the eastward, south by east.

Q. Up to what time did you observe the steamer?

A. I observed her as soon as I got in the top.

Q. From what time?

A. From then until she was hove to.

Q. How long were you observing her before the shot was fired?

A. I suppose pretty nearly—about three-quarters of an hour; I don't know the time accurately; I didn't take any note of it.

Q. What was her distance apparently from the "New Orleans" when that shot was fired?

A. About 4 miles—4½.

Q. What was her bearing?

A. Almost right ahead; she was a little bit on our starboard bow; the "New Orleans" kept altering the course southward until
226 we fired; we were heading almost for the Morro, and she bore almost on our starboard bow when the shot was fired.

Q. At the time the shot was fired had the steamer altered her course?

A. No; not that I could observe.

Q. At that time how were her masts?

A. Well apart from the top; we could see the whole broadside, and from our course being well to the westward it looked as though she was heading right across our course, slightly to the eastward, her masts so far apart, had she been heading anywhere from where we were heading, the masts would have been nearer together; she was wide apart, and we could see everything between the masts.

Q. From the course on which the shot was fired—from the point that you observed her—was it possible for her to have gone clear of the land?

A. Impossible.

Q. When the shot was fired did she change her course?

A. Not immediately; she changed her course shortly after that, before they had time to fire a second shot; she held the course, I suppose, about half a minute, and they were about to reload, but before they could reload she ran to and headed for us.

Q. In what direction did she come in order to reach the "New Orleans?"

A. She came to the eastward; at the time we fired the shot the "New Orleans" was to the northward and slightly to the eastward, the Morro bearing almost due south of us.

Q. Who was in the military top with you?

227 A. Mr. Tarrant and Mr. Briggs, two other cadets attached to the "New Orleans."

Cross-examination by Mr. GOVIN:

Q. What time was it after the shot was fired and the ships finally came together?

A. About 8.20; the shot was fired after 8 o'clock; I judge 10 or 15 minutes after.

Q. And it was 7 o'clock when you were chasing her?

A. No; I hardly think it was that.

Q. Didn't you testify to that a moment ago?

A. I did, and I furthermore said I did not observe the time; I will not state any time; I hadn't a watch.

Q. What time did you go on deck?

A. Somewhere about 7 o'clock.

Q. Was the "New Orleans" chasing her then?

A. Just started.

Q. That makes it 7 o'clock?

A. Yes.

Q. Draw a diagram of the relative positions of the ships and San Juan Harbor when you saw her.

A. (Witness draws diagram.)

Q. At the time you saw the "Olinde Rodrigues" you were in the position marked "N. O.," or more to the eastward?

A. Yes.

Q. That was at 7 o'cock in the morning—about that hour?

A. Somewhere about that hour.

Q. How far were you from the land then, about?

A. From the land about 8 miles.

228 Q. The land bearing south of you?

A. Yes.

Q. Did the "Olinde" reach a point on a line drawn north and south through Morro before you came up with her?

A. Yes; I think she did.

Q. How far was she then from the land when she was on the line north and south?

A. She was not on a line north and south until just at the time we hove her to.

Q. Where were the two ships when they came together, on the line north and south?

A. Not exactly; a little bit to the eastward of north from Morro.

Q. How far was the "Olinde" from Morro at the time you saw her, about 7 o'clock?

A. Quite a distance; way out to sea; I presume about 15 miles.

Q. How was she heading?

A. South by east, about.

Q. Then, at the time of capture, how far were both ships when they together?

A. At that time she was about $7\frac{2}{3}$ miles, I found out afterwards.

Q. How did the Morro bear?

A. A little to the westward of south from the "New Orleans;" that was after the ships were together.

Q. Let me call your attention to the testimony; you say that the "New Orleans" was about 8 miles from shore to the eastward of San Juan?

229 A. Yes; as near as I could tell.

Q. How did San Juan bear?

A. I didn't see the compass; San Juan bore way on the port bow at that time; I was not near the compass; I took no bearings.

Q. How many miles off was San Juan?

A. About 10 or 12 miles; that is, the Morro.

Q. How many miles was the "Olinde Rodrigues" offshore at the time you sighted her?

A. I said about 15 miles.

Q. And how far from the "New Orleans," about?

A. Pretty near the same distance.

It is agreed that the testimony of Naval Cadet Tarrant given de bene esse shall be stricken from the testimony de bene esse and not considered before the court.

230 *Order for further proof.*—Filed 15 Sept., '98.

United States of America, eastern dist. South Carolina, in admiralty.

THE UNITED STATES
vs.
THE STEAMSHIP "OLINDE RODRIGUES."

Upon the opinion of this court, dated August 13th, 1898, the depositions of the prize master and prize crew presented on the motion for further proof, and after hearing the United States attorney in support of the motion, and Rafael R. Govin in opposition, it is

Ordered, that the captors have ninety (90) days from the date hereof to supply further proof as to the entry of the "Olinde Rodrigues" into the port of San Juan, Porto Rico, on July 4th, 1898, and as to the courses and movements of said vessels on July 17th, 1898. Further

Ordered, that the claimants may thereafter have such time to offer testimony in reply as may seem proper to the court.

WM. H. BRAWLEY,
U. S. Judge.

AUGUST 13, 1898.

231 *Order to take ship to New York, &c.*—Filed Sept. 16, '98.

The United States of America, eastern district of South Carolina, in the district court, in admiralty.

THE UNITED STATES
vs.
THE STEAMSHIP "OLINDE RODRIGUES."

The cargo of the "Olinde Rodrigues" having been released by order dated this day, and it appearing that the said cargo can not be transshipped without great expense, and there being no objection from the claimants or the captors or the district attorney to the order sending the ship to New York, where the cargo can be economically discharged, it is

Ordered, that the marshal do forthwith cause the said vessel to be taken to New York, and that he retain possession thereof and shall request the captain of the "Olinde Rodrigues" to navigate said ship to

New York, the marshal continuing in possession thereof until the further order of this court.

Further ordered, that the marshal shall allow the cargo to be discharged as the Compagnie Generale Transatlantique or its agent may direct, subject, nevertheless, to the supervision of the prize commissioners or one of them.

WM. H. BRAWLEY,
U. S. Judge.

16 SEPT., 1898.

232 *Order to release ship on bond.*—Filed 16 Sept., 98.

The United States of America, eastern district of South Carolina. In the district court. In admiralty.

THE UNITED STATES
vs.
THE STEAMSHIP "OLINDE RODRIGUES."

Application having been made by the district attorney in behalf of the Government and captors that an adjournment be had in the taking of testimony in behalf of the Government and captors, and hearing the district attorney in support of said motion to adjourn and Mr. Rafael R. Govin in opposition thereto, it is

Ordered, That the taking of testimony be adjourned, subject to the further order of this court.

In view of the application for such adjournment and of the great expense under which the ship is now held, it is

Further ordered, That the "Olinde Rodrigues" shall be released upon claimants giving bond by the Compagnie Transatlantique Generale, its owners, without sureties, in the sum of $125,000, conditioned for the payment of $125,000, upon the order of the court, in the event that the vessel should be condemned.

WM. H. BRAWLEY, *U. S. Judge.*

16 SEPT., 1898.

233 *Order releasing cargo without bond.*—Filed Sept. 16, 1898.

At a stated term of the district court of the United States for the district of South Carolina, held at the U. S. court-house, in the city of Charleston, on this 15 day of Sept., 1898. Present: Hon. William H. Brawley, district judge.

UNITED STATES OF AMERICA
against
THE STEAMSHIP "OLINDE RODRIGUES," ETC.

A motion having been made by the claimant herein for an order for the release of the cargo on board of said steamship "Olinde Rodrigues" without bond, and for such other and further relief as may be just, and such motion coming on to be heard, and after hearing counsel for the respective parties,

Now, on reading and filing the notice of the motion aforesaid and on

all the papers and proceedings herein, and on motion of Rafael R. Govin, esq., proctor for the claimant, it is

Ordered, That the cargo of the said steamship be, and the same is hereby, released without bond.

WM. H. BRAWLEY, *U. S. Judge.*

15 SEPT., 1898.

234 United States district court, district of South Carolina.

THE UNITED STATES *vs.* THE "OLINDE RODRIGUEZ." } Before Hon. William H. Brawley, district judge.

BAR ASSOCIATION,
New York, October 18th, 1898.

Appearances: Hon. Abial Lathrop, U. S. attorney, and Mr. Hagood, assistant U. S. attorney, for the Government; Mr. J. P. K. Bryan, for the captors; Mr. Rafel R. Govin, for the vessel.

The COURT. It is understood that this hearing is continued in New York, by consent, and for convenience of counsel and witnesses. This is simply as to the place of hearing.

Mr. GOVIN. I desire to raise the point as to the propriety of having granted the adjournment at all. We do not raise the point as to whether the hearing should continue here or in Charleston, but the question is whether any hearing at all should continue after the hearing in Charleston. There was an objection made then to any adjournment, and the court decided that it would allow an adjournment.

235 Mr. JONES. Mr. Govin's suggestion, added to this statement of the understanding, covers the whole ground; that is to say, the proceedings are had here, by consent, as to the place where the hearing is to be had.

Mr. GOVIN. If your honor please, before we proceed, in reading over the testimony I find no mention has been made by the stenographer of the several objections that have been made here in the course of this proceeding, beginning with the motion to release the vessel on the opening of the preliminary proof, and there is nothing on the record to show these different objections. Therefore, if you will allow me, I should like to present a motion now for the immediate release of the vessel, based on grounds which I will read, and that will incorporate in the minutes the motions that have been made.

Mr. LATHROP. On that I desire to enter the objection that the court has no jurisdiction to hear motions in the cause outside of those appertaining to the admission of testimony, the objections relative to the testimony, objections to the competency, and so on.

Mr. JONES. That is clipping your consent.

Mr. LATHROP. I do not understand so. The consent was that the hearing, as to the taking of testimony, should be continued in New York, but that the proceeding should not be bodily moved to New York in all its bearings—motions for discharge of the vessel and all that should be heard here—because we are not here prepared to meet those.

Mr. GOVIN. You misunderstand me. I am simply adding to
236 the record what should have been in there; that is, motions that have been made before, answered to before, decided in favor of the Government and the captors. There is absolutely no record of those motions, and that is what I want in now. They should have been in at the time. Your honor distinctly recalls the motion.

The COURT. We will see what you have there.

Mr. GOVIN. I request the immediate release of the "Olinde Rodriguez" on the following grounds: Because a motion was properly made for the release of the vessel upon the opening of the interrogatories upon the ground that no evidence was found to justify the seizure and that your honor had no power to order further proof; because objection was properly made to any order allowing the Government and captors to present further proof; because objection was properly made to the taking of testimony under the order for further proof; because objection was properly made to allowing the Government and captors an adjournment after presenting testimony and failing to make a case; because said adjournment was granted without affidavit of the captors showing the reason for this request and making a proper case for the exercise of the court's discretion. You will remember I made the point at the time, that I asked an affidavit of what the captors expected to prove should be made, and your honor decided that it was not necessary and the hearing was adjourned. I think that substantially corrects the record in what it is deficient.

Mr. LATHROP. As to the first objection, I presume, of course, my friend made the motion to discharge. I was not myself then
237 acting in the case, and have no personal recollection, but I presume, of course, they did that. Then, as to all those other objections, of course there can be no objection—every one of these objections that they state down to the last—but I do not recall, and my recollection differs a little from my friend's as to his requiring an affidavit and his motion being excluded on that ground, because I recollect that when he called for something on the part of the Government to show what was intended to be done on this further hearing after the adjournment, I made an oral statement before your honor of the general nature of what we expected these witnesses would prove, and I understood at the time that that was satisfactory to my friend, or I should have put that into the form of an affidavit. I did not, because that was my understanding at the time that an affidavit was not required after I had made the statement of the names of the witnesses we knew about and about what we thought we could establish by them.

Mr. HAGOOD. All that is recited in the order on which your honor granted further proofs. In the recital Mr. Govin and myself drew this order, and I think it recites all the facts.

Mr. GOVIN. It distinctly says it was in opposition to that order. I opposed it, and that is what I want on the record.

Mr. HAGOOD. It is on the record.

Mr. GOVIN. My recollection is that I asked the court that we should have some information as to what the captors and Government intended to prove. There were no names volunteered. That was the very point.

I do not remember there was anything said as to what the Gov-
238 ernment or captors intended to do; simply that the navigator of the "New Orleans" was to be presented. I suggested an affidavit should be made stating some legal ground why an adjournment should be had, and the court overruled the objection and granted the adjournment at the request of the district attorney. Now, all I ask is that these facts go on the record. The judge is entitled to make any order he pleases, and he made it.

Mr. LATHROP. I recall that I specially mentioned Commander Emory of the "Yosemite" and such officers, whose names I did not mention, on the vessel, and also that there was a Spanish witness whose testimony I regarded as very material, or a Porto Rican, that we had learned of. I think you will recall I stated that.

Mr. GOVIN. If your honor please, let the district attorney make the affidavit now. He says he was willing to make it at that time if it had been requested.

Mr. LATHROP. No; I won't make an affidavit now.

The COURT. I do not think an affidavit is necessary.

Mr. GOVIN. I am willing to take your honor's decision. I want the record corrected.

The COURT. I so decide that it was not necessary there should be an affidavit. Proceed with your testimony.

WM. HELMSLEY EMORY, a witness called on behalf of the Government, being duly sworn, testified as follows:

Examined by Mr. LATHROP:

Mr. GOVIN. I should like to ask the district attorney what he
239 proposes to prove by this witness, if your honor please. You see this examination is going on in pursuance of an order for further proof. Now, we are entitled to know what the district attorney is going to prove, so as to make objections now as to the whole testimony instead of going at it as the questions are asked. I mean a general statement of what he intends to prove by this witness. I think we are entitled to that.

Mr. LATHROP. It seems to me, your honor, that is rather unusual. I asked to take the testimony outside of order, and it is, of course, subject to objection; but in a general way, of course, I intend to prove by Commander Emory the circumstances attending the appearance of the "Olinde Rodrigues" before the port of San Juan while he was on the blockade service, and any facts relating to that entrance and exit on the 5th of July.

Mr. GOVIN. If your honor please, we object to that testimony on this gound: The Government, having proceeded with the examination and presented testimony as to the position of these vessels and their course, should have exhausted themselve' on that testimony as to that point, and I believe the rule of law is well established that they can not obtain an adjournment for the purpose of curing defects in their case, or adding testimony that was not produced at the time, unless good cause is shown for this lack of presentation at the time.

The COURT. Note the objection. The objection is overruled. Proceed with the testimony.

Mr. GOVIN. And the further objection, this is not proper, legal further proof under the order.

Q. (By Mr. LATHROP.) Commander Emory, what position do
240 you hold in the United States Navy, if any?

A. Commander.

Q. How long have you been in the service?

A. Thirty-six years.

Q. How did you enter the service?

A. From the Naval Academy?

Q. At Annapolis?

A. No, sir; Newport. It was there during the civil war.

Q. Have you remained in the service ever since that time?

A. Yes, sir.

Q. Where were you stationed about the 1st of July last?

A. On the north coast of Porto Rico, blockading the port of San Juan.

Q. When did you go upon that station?

A. I arrived there Saturday afternoon, the 25th of June. I reported to the "St. Paul," the senior officer, on the 25th of June.

Q. In what ship?

A. The "Yosemite."

Q. In what capacity were you on that ship?

A. Commanding the "Yosemite."

Q. What is the size and armament of that vessel?

A. She is a vessel of 7,500 tons displacement. She has a battery of ten 5-inch rapid or quick-firing guns, rapid firing we call them, and 6 6-pounders, and two one-pounders, all rapid firing.

Q. What is the build of that vessel as compared with ordinary cruisers in the United States Navy, as to her height out of water, and so on?

A. As far as her free board, her height out of water, there is not much difference, but without going into details it would be difficult to describe the difference between a man-of-war and a merchant ship, but to
241 any sea-faring person they are noticeable at once.

Q. Then this was formerly built for what?

A. She was a vessel built for the Morgan Line; and she was a converted merchant vessel.

Mr. GOVIN. If the district attorney expects to present by other witnesses further testimony as to the position of these ships, I ask that they be excluded from the room if they are here.

Mr. LATHROP. Of course. Ensign Eustis and Ensign Burn.

(The court directed the witnesses named to step into an adjoining room, which they did.)

Q. Do you know the United States cruiser "New Orleans?"

A. Yes, sir.

Q. As compared with the "New Orleans," what appearance do these vessels present different from each other in size and the distance at which they could be seen?

A. They are totally different. The "New Orleans" is less than 4,000 tons, but the size at sea, with the conditions of the atmosphere makes little difference. The great difference between them is that the "New Orleans" has military masts, and we have simply two spars. Military

masts render it difficult until you get near enough to her to distinguish whether she is a battle ship or a cruiser, whereas, with regard to us, when we are first seen we may be taken for a merchant ship until they see our guns.

Q. What are the names of the officers of the "Yosemite" under you, inclusive only of the ensigns, not going below that?

A. Mr. Sargent, the executive officer; Mr. Smith, the navigator; and the rest of the officers were volunteers, with the exception of
242 marine officers, who were not only volunteers but men taken from civil life; never been to sea before.

Q. What were the names of the ensigns at that time on the vessel?

A. The ensigns or the lieutenants?

Q. Ensigns?

A. Ensigns Mr. Gaylord, Mr. Burns, Mr. Eustis, Mr. Parker, and one other whose name—who has left the ship—whose name I have forgotten now.

Q. On the morning of the 4th of July did you sight any vessel near the port of San Juan; a steam vessel?

A. Yes.

Q. Did you or not sight the vessel "Olinde Rodriguez"?

A. A vessel which afterwards, when she came out the following day, was ascertained to be. That day I knew it was a vessel of the Messagerie Maritime, because we distinguished her burgee, or of the Transatlantique Company, I should say.

Q. At what time in the morning did you sight that vessel?

A. About 6. Oh, before; half after 5; from half after 5 to 7 probably she was in sight, or 5 to 7.

Q. Do you recollect at what hour the sun rose there?

A. Yes; I cannot say, of course. That is a matter of a nautical almanac, but I was always on deck an hour before daylight and generally during the day. Sometimes all night, but my constant habit was to be up at 4 o'clock, so I imagine it was about half after 5, we will say.

Q. And the day broke about how long before sunrise?

A. The daylight about that time was half after 4, and bright daylight at 5 o'clock.

Q. What was your position relative to the Morro at San Juan when you sighted this vessel?

A. If you wish an exact bearing, I would have to have a chart and instruments.

243 Q. Only about, because it is not important?

A. Well, I was to the westward not only of San Juan but of Salinas Point.

Q. Just how far from San Juan?

A. Salinas Point is about three miles from San Juan; it was to the westward—southward and westward.

Q. And about how far from the shore?

A. About five miles from the shore.

Q. And in what direction did this vessel bear from you when you first saw her?

A. She bore about due east; that is, appeared to be about as far from the shore to the eastward. I saw the smoke first.

Q. Well, now, Commander, will you state in your own language what, if any, action you took and what the action of the other vessel was at that time?

A. When the smoke was seen we were headed for them; we headed directly for them, and, as is usually the case, the pelorus is placed on the vessel, so if she changes her bearings—that is, if we are not heading exactly opposite courses—the pelorus will show it, and then we regulat' the direction of the vessel so that she will intercept, and with the pelorus and our navigating instruments we tell exactly how much to change our course so that the relative speeds will make the vessels converge; but in this case we were heading a little west—it may have been a little to the southward or northward—so as to take us about five miles from the coast. The ship was end on, and in a few moments after we saw the smoke we saw the vessel. Of course the weather isn't always very clear. It may not be raining. I don't remember the weather
244 exactly this morning, but at that time in the morning it is not weather such as we have at home in October, and the vessel was soon made out to be a steamer, and heading a course nearly west, while we were heading east. I did not change the course of my vessel at all as we appeared to be meeting end on, and when this vessel that we were nearing came off the batteries—that is, the easternmost batteries—a gun which is on the island on which San Juan is built, or the town is erected, a new line of fortifications—I have not been ashore there, and all we know is through our glasses, but there seemed to be about 12 or 14 guns at least of 8-inch calibre, and the fortification extends along the island from San Juan to the eastward about three miles to the end of the island. The course of this vessel in coming inas a general rule—I do not know the course of this vessel—but in coming in myself I should have taken about that distance, and when the port bore on the bow then I would commence edging in, but when we made out this vessel and got near enough to make out her hull, and before we had made out her flag, she turned in, altering her course at least four points, and headed direct for the batteries. Ten minutes more would have brought her under our guns. That is, our five-inch guns can not be depended upon over three and a half miles, although the ranges are given much longer. She turned directly in. Then, of course, we were steaming along and she was directly inshore from us; that is, in 15 or 20 minutes. We were steaming about 16 knots, and the vessel turned in and went directly under the easternmost guns. That is, you can not see the guns, but you can see the line of earth works thrown up at some distance at different points.
245 She headed directly, and it looked to us as if at right angles, but of course with regard to the number of points she turned that I could not say difinitely, but she went out of her course, starboarded the helm and ran in under the guns, and then came along parallel to the shore until she rounded and went into San Juan. Of course we followed back, but we did not go nearer ourselves than four miles from Morro. Then we were two miles within the zone of their guns, but we did not go any nearer, because we were not there to fight the batteries. We were there to keep the blockade. The vessel distinctly turned and went out of her course to get in under the guns apparently. That was my judgment at the time. It made me very anxious to overhaul her when she came out.

Q. Now, when was the next time that you saw that vessel?

A. July the 5th, my recollection is.

Q. The following day?

A. The following day, about—I think she left the port about six. It was half after 7 when we boarded her—that is, when the boat from the "Yosemite" boarded her.

Q. In the morning?

A. In the morning.

Q. Now, just state, Commander, the first appearance of that vessel that morning, and your position relative to the Morro; and then, concisely, the action, as you did before on the other day.

A. On the morning of July 5th the "Yosemite" was about 4 or 5 miles to the southwest of Salinas Point, and waiting and on the lookout for vessels trying to avoid the blockade, and also in a commanding position to overhaul the steamer that went in, should she come out.

246 Q. Do you mean southwest?

A. I mean northwest. We were more to the westward than the northward; northward and westward would cover it. It was about an hour after daylight had appeared that the steamer came out, and before we boarded her, according to my observation, it was about an hour and a half. She came out slowly and stopped. I did not know which way she was going; I could not tell. I took a position off Salinas Point because there were no guns there, whereas taking it off Morro or off any point to the eastward of the Morro, four miles to the eastward, they have their heavy modern batteries, or so reported and as far as we could observe with our glasses. I saw the vessel in this position I have just described—the "Olinde Rodrigues"—come out about 6 o'clock. It was half past 7 before we boarded her, and it was my impression that the captain desired me to come and board her there where we would be under the guns. So, of course, everyone who has been in that position knows that when you lower a boat——

The COURT. State the facts, and not your impressions.

The WITNESS (continuing). All right, sir. I waited until she had come out further, and my recollection is it was about an hour and a half, until half after 7, before she proceeded, at what I considered a safe distance, to lower the boat. I lowered the boat and sent Mr. Burns aboard, and as it was a French vessel and Mr. Burns does not speak French, but I did not wish to change him and send Mr. Eustis, because I found it necessary, in order to keep up the boarding, to have the same boarding officer, who keeps a strict account of each vessel, and I hold him

247 responsible for everything; and then it needs one of experience also—sea faring experience—which Mr. Burns has, but feeling that he might not be able to make himself understood, I sent Mr. Eustis with him, who was conversant with French.

Q. (By Mr. LATHROP.) How long did the boarding officers remain on the "Rodriguez"?

A. At least half an hour.

Q. Did you have, yourself, any communication with the master of the French vessel?

A. No, sir.

Q. Now, recurring to the day before, what was the distance in her "Rodriguez" from the "Yosemite" when she made this change of the course, of which you have spoken?

A. Not over 6 miles.

Q. And not under what, should you say?

A. If she had continued her course in a short time she would have been within the zone of my guns; it would have been too late to have turned in.

Q. Did I understand your answer then to be, in your judgment, she was about 6 miles from you?

A. About 6 miles. It is difficult to make that statement exactly. I can tell you the speed I am going and the speed of the other vessel and what I should judge she was going, and then it is a matter of placing it on the chart exactly where she turned in, because we have our position on the chart, all of which I have, but I have not brought it with me.

Q. What flags did she have flying at that time?

A. I recall distinctly the French flag in the usual place at the peak and the Transatlantique flag at the masthead.

Q. What, if any, flag did you have flying?

A. I had a flag at our peak, or at the flagstaff rather, the one
248 we usually carry; the ensign at the flagstaff.

Q. Did you or not have any signal flags or make any signals?

A. Not on July 4th, sir. I may have, but I do not recall it.

Q. Why did you not signal to her at that time when she was at the nearest point to you?

A. Because I had no command over her. She was running away from me. You can not signal to anything that you do not command. She was going in; she was not coming out.

Q. And where was she, now that you lost your command of her?

A. Under the guns, under the protection of the Spanish guns.

Q. Now, Commander, do you know what I think you spoke of as the zone of fire perhaps of the guns of the Morro and the port immediately around the harbor at the mouth of the harbor?

A. Yes; at least six and a half miles.

Q. At least six and a half miles?

A. Oh, I know that positively; I know it from experience.

Q. What experience did you have which gave you that knowledge?

A. When we were attempting to overhaul the "Antonio Lopez," an armed transport, on the 28th of June, to save herself from being captured she ran on the beach about five and three-quarters to six miles—not less than five and three-quarter miles as the crow flies—from San Juan and to the westward, and while trying to destroy her, or doing our best to destroy her, the guns from San Juan, any number of them, passed over the bridge and smokestack, and the majority of them went one thousand yards to the westward of us.

Q. You mean the shots from the guns?

A. I mean from the Morro. Of course we could always tell
249 them different from the Spanish vessels, because we could see the smoke and see that the trajectory was higher.

Q. What vessel succeeded you upon the blockade at San Juan?

A. "New Orleans."

Q. Did you communicate or not your knowledge as to the range of the guns to the commander of that vessel?

A. I did, and I gave him plans of all the batteries—plans that had been furnished me.

Q. When the "Olinde" came out on the morning of the 5th did you make any signals to her?

A. I did. The signals that I made were, I think, misunderstood——

Mr. GOVIN. If your honor please, I move to strike out all the testimony from this witness regarding the exit on July 5th of the "Olinde Rodriguez." The order limits the proof to the entry of the "Olinde Rodriguez," not as to her coming out. That is entirely without the order and without the provision made by your honor for the taking of this further proof. I submit the order.

The COURT. Just note the objection. I will consider that. There is no question yet.

Mr. JONES. There is a question now whether he intercepted her on her coming out the next day, as I understand it.

The COURT. That is admitted already in the case.

Mr. JONES. The order is limited to the facts attending the entry on the 4th. The district attorney is now asking about what took place when she came out.

Mr. LATHROP. I perhaps have a very limited nautical knowl-
250 edge, and in drawing that order I may have omitted. I certainly understood that where a vessel went in, and, as in this case, almost immediately came out, that anything relating to her entry to that port would include also her coming out as one continual thing. The testimony, as I understood it, was to relate to the actions of the "Rodriguez" in connection with the "Yosemite." That was my idea of what it would be.

Mr. GOVIN. The further proof is offered to elucidate some point which the judge is in doubt about. The order prescribes what the further testimony shall be. There must be some limit to it. You can not go over every possible question, and the order limits it as to the entry at San Juan. The rest of the matter is in the case already.

Mr. BRYAN. I might suggest, with the permission of my friend, the district attorney, that the facts of the egress of that vessel from San Juan on the succeeding day, the circumstances attending that egress, would bear very largely upon their condition of mind with which she went in; and all the circumstances detailed here by the commander as to how she came out bear directly upon the question of her attitude to that port, and would enter into the whole question, even under the terms of the order.

Mr. JONES. If your honor please, the point of our general objection here is as to the legality of any further proof whatsoever. Certainly upon general principles there can be no further proof in any admiralty case, or any case, upon a crucial point which has been gone over before, because it opens the door to perjury and holds out temptation to witnesses to misrepresent the facts, and in prize cases no further proofs
251 except those that are taken in preparatorio can be ordered unless special reasons are given for the granting of the order, or the judge of his own motion desires to be informed about some fact. Now, that condition of things does not exist here with respect to this point.

The fact that she was notified on coming out of the existence of the blockade has been admitted. There has never been any question of it. Now, aside from technical objections it seems to me it is unfair to us now, after the case has progressed to this point, that the Government can go all around it and reinforce, if you please, their testimony with respect to every important point in the case. In other words, there can not be a second trial of this question. There was full opportunity at the hearing to have presented proof as to this point, and the Government did not present it. Neither have they asked or shown any reason why they should present testimony to this point.

The COURT. The testimony as to the entry and exit from the port of San Juan on the preliminary hearings was testimony from the vessel itself. The Government has never yet offered testimony on that point that the court recalls. This is the first time that the Government has ever undertaken to offer any testimony. All the testimony previously relating to the egress from the port came from the ship itself, from the ship's officers, and from the testimony of the officers and men and passengers aboard the ship. This is not an attempt on the part of the Government to reinforce any testimony on that point or to strengthen its case.

252 Mr. JONES. I have made another objection. There is no order for it, and it is not in the nature of further proof.

The COURT. The Court will take the testimony and reserve the question. It may be stricken out if good reason appears. Just now it does not seem to me that there is any real reason why the testimony should not be taken.

Q. (By Mr. LATHROP.) Now, Commander, what signals, if any, did you make to the "Olinde," on her appearance that morning coming out of San Juan Harbor?

A. I gave the order to make signal for her to come nearer; but they did not make that signal, so I understand. They mistook my order; so they made some other signal.

Q. Do you know what other signal they made?

A. Yes; I don't know what signal they made. My signal officer was a volunteer; he was a doctor, and inexperienced totally, but I could not attend to that matter myself, and it seems, or I have understood, that he made a signal——

(Objected to. Objection sustained.)

The WITNESS. What he made, I don't know. I am informed, however, that there was some mistake about it.

Q. Where, relative to your vessel and to the fortifications, did the "Olinde" stop—finally come to a full stop?

A. She came to several full stops. The first time was under the guns; the second time was under the guns; the third time was, I considered, sufficiently far away from the guns for me to lower a boat.

Q. What space of time between her first full stop and the time when you considered it safe and did lower the boat?

A. We sighted her certainly by 6, and it may have been before;
253 but we have it entered in our log at half past 7, I think, that the boat was lowered.

Q. How long after you sighted her was it that she came to the first full stop?

A. I can not tell. When looking at a vessel end on, and you are waiting some time, and when the distance is not over four or five miles that separates you, you might look at her some minutes without telling whether she had stopped or not. Unless you are looking at her broadside, or at an angle, it is very difficult to tell whether she has stopped. I only know that if the vessel had been in a hurry, as most merchant vessels are—with a merchant vessel time is money; they are running for a market—and coming out of San Juan——

Mr. LATHROP. Never mind that.

No cross-examination.

254 GEORGE P. EUSTIS, a witness called on behalf of the Government, being duly sworn, testified as follows:

Examined by Mr. LATHROP:

Mr. GOVIN. If your honor please, I wish to have the same objections made to the testimony of Commander Emory noted to the testimony of Mr. Eustis.

The COURT. Certainly.

Q. (By Mr. LATHROP.) Mr. Eustis, what, if any, position do you hold in the United States Navy?

A. Ensign.

Q. When did you commence?

A. The 6th of May, 1898.

Q. On what vessel did you serve?

A. On the "Yosemite."

Q. Where were you on the 4th day of July last?

A. Blockading the port of San Juan off the north coast of Porto Rico.

Q. On what vessel?

A. On the "Yosemite."

Q. Do you recollect sighting the steamer "Olinde Rodriguez" on that day?

A. Yes, sir; very distinctly.

Q. Just state now what you saw of the positions relatively of your vessel and of the "Rodriguez" were to the harbor of San Juan at the time you sighted her.

A. At the time she was sighted?

Q. Yes.

A. At the time she was sighted we were to the westward and she was coming from the eastward.

Q. And at about what distance?

A. When we sighted her?

Q. Yes.

A. I should say about 8 miles; it was early in the morning.

Q. What action did your vessel take on sighting her?

A. We went towards her full speed.

Q. And what action did she take?

255 A. When we got within about 4 miles of her she turned in sharply to the port and went under the batteries.

Q. How far was the "Rodriguez" from the "Yosemite" when they passed each other, she going in?

A. We did not pass her. When we saw her run in we slowed down.

Q. When you came opposite each other, how far was she from the "Yosemite" then?

A. We were certainly within 4 miles of her.

Q. And what was your distance from the land?

A. I should say about that distance, 4 miles or 4½.

Q. I mean your distance from the land.

A. That is what I mean; about that distance.

Q. Then how far did you say she was from you?

A. We were within 4 miles; as close as she was, because we could read her signal—her flag.

Q. Perhaps I do not make myself clear. You were on the outside, as I understand, of the "Rodriguez," she being on the inside of you, between you and the land.

A. We did not pass her.

Q. You did not pass her?

A. No; we stopped and she went into the harbor and we stood to the westward still.

Q. You did not go back to the westward at all then?

A. No, sir; we did not go to the eastward.

Q. How far in your judgment was the "Olinde Rodriguez" from the shore at that time?

A. At what time, sir.

Q. At the time when you were at the nearest point to her?

A. I should say about three-quarters of a mile.

Q. Do I understand you to say that your vessel continued to
256 head to the eastward?

A. No; we headed up and stopped when we saw she was running in.

Q. And which way was that?

A. She ran under the guns of the port and we could not follow her in.

Q. And you just lay off?

A. Yes, sir.

Q. Then she passed you and went to the westward of you?

A. No, she went into the harbor. We did not pass each other.

The COURT. They were going from opposite directions, as I understand it.

Q. Which side of the harbor of San Juan were you at that time?

A. We were to the westward a little.

Q. Now, the next day following this, did you see this vessel again?

A. She came out on the following day; yes.

Q. What was done that day relative to the two vessels; your actions and hers that day?

A. We signaled to her to stop and she stopped about two miles from the fort and lay there about three-quarters of an hour to an hour, and then she saw that we were not coming in and she came out towards us, but she came out full speed, and so we signalled to her again that we wished to communicate with her, and then Ensign Burns and I went on board of her.

Q. Did you have any conversation with the captain of the "Olinde Rodriguez" while you were on board of her?

A. Yes.

Q. Now, just state what that conversation was.

A. I asked him, under the captain's instructions, why he did not stop the day before, and he said he had no notification that the port was blockaded, and therefore he did not see why he should stop; that he did not wish to be delayed.

257 Q. Now state fully any and all the conversation that you had with him?

A. Acting under the captain's instructions, I asked him if he had heard indirectly in any way that the port was blockaded at St. Thomas, and he said he had not, and that his consul had no official notification of the fact that the port was blockaded; and I asked him why he ran under the guns of the fort as he had when we ran towards him, and my recollection is he said that he only did that to get a pilot. I then warned him that the port was blockaded, and he said that when he came back he would not come close to the shore, which I told Captain Emory.

Q. Now, tell us all that was said about coming close to the shore in coming out.

A. He asked me to request the captain not to stop him when he came back; that he would keep well out.

Q. When he came back from where?

A. From Port au Prince, I think. He did not wish to be delayed, and he would keep well out, which I told Captain Emory.

Cross-examination by Mr. GOVIN:

Q. Could the "Olinde" go into port without going under the protection of the shore batteries?

A. Could she have done so?

Q. Yes.

A. Well, she went directly out of her course nearly eight points. She was heading towards us.

Mr. JONES. I move to strike out the answer on the ground that it is not responsive.

The COURT. Yes; strike out the last answer.

Q. Could she have gone into the port of San Juan without going under the protection of the shore batteries?

A. No, sir; she could not.

258 Q. As I understand you, the "Olinde" came from the eastward and when she got opposite Morro turned into port?

A. No; I said the shore batteries.

Q. Where are the shore batteries?

A. About three-quarters or half a mile to the eastward of the Morro.

Q. Then when she got to within half or three-quarters of a mile eastward of the Morro, then she changed her course?

A. Yes, sir.

Q. She changed her course towards the shore?

A. Towards the shore.

Q. (By Mr. LATHROP.) How many points did she change her course?

A. Very nearly eight points.

259 JOHN BURNS, a witness called on behalf of the Government, being duly sworn, testified as follows:

Examined by Mr. LATHROP:

Mr. GOVIN. If your honor please, the same objections as to Captain Emory's testimony apply to this witness.

The COURT. Yes; it will be noted.

Q. (By Mr. LATHROP.) Mr. Burns, what, if any, position do you occupy in the United States Navy?

A. Ensign.

Q. How long have you occupied that position?

A. Since the 30th of May.

Q. Previous to that time what was your occupation?

A. I was mate in the Navy. Then before the war broke out I was first officer of the steamer "El Sud."

Q. Which was afterwards what?

A. The "Yosemite."

Q. Where were you on the 4th of July last?

A. On board the "Yosemite."

Q. And at what station?

A. Off San Juan, Porto Rico.

Q. Did you sight the "Olinde Rodriguez" that day?

A. Well, I was on board when she was sighted.

Q. Did you, yourself, see her that day?

A. Yes, sir.

Q. At what time did you see her?

A. About 6 o'clock.

Q. And what was the position of the two vessels at that time relative to the shore and San Juan Harbor?

A. The French steamer was about a mile and a quarter from the shore halfway along the island.

Q. What do you mean by "the island?"

A. Well, the island that San Juan is on; about halfway down.

Q. You do not mean the island of Porto Rico?

260 A. No, sir; and the "Yosemite" was about five miles off at the time.

Q. And in what direction?

A. About directly off the Morro.

Q. And how far was the "Rodriguez" from you?

A. At that time?

Q. Yes.

A. About 5½ or 6 miles, as near as I could judge. I could not be positive.

Q. What was her action after you saw her?

A. After I seen her she came along the coast close inshore; turned around and turned into the port when she came to the Morro. I read the French Transatlantique Line's house flag with the glass quite plainly and the French flag. I was positive of it, because I told the captain what line of steamers she was.

Q. When did you next see the "Olinde Rodriguez?"

A. About 6.30 next morning when she came out of the port.

Q. And where was the "Yosemite" then?

A. I should say she was about 10 miles to the westward of the Morro.

Q. And what was the action of the "Yosemite?"

A. We lay to waiting for her to come out. As she came along I think they hoisted the signal to stop, and after coming a little while she stopped. Then we hauled that signal down and hoisted the signal "wish to communicate"—international signal. She came a little further and then stopped two or three times, I should say; I am not quite positive, and finally she came out. It must have taken at least three-quarters of an hour, I should say, for her to come along. She could have come along quicker.

Q. What is the speed of the "Yosemite?" What was it at that time?

A. The "Yosemite" at that time was laying to.

Q. I mean now generally. What speed could she make?

261 A. At full speed?

Q. Yes.

A. Fifteen and a half knots, sir.

Q. What was your position on the "Yosemite?"

A. While on that blockade I was boarding officer of the ship.

Q. When she finally stopped what was done?

A. When she stopped I was ordered to lower the boat, board her, and I had orders from the captain about finding out if he didn't know a blockade was on when he went in the day before. I had Mr. Eustis with me as interpreter, and the captain of the French steamer said that when he left France he had no warning about a blockade of San Juan by his owners or agents; that he had gone into St. Thomas, Danish West Indies, and that the French consul there had not told him anything of it. I asked him, through Mr. Eustis, if he didn't hear it when he was ashore at St. Thomas, and he said no. I asked him if he didn't see us when he went into port; he said he did, but that he didn't know there was a blockade.

Q. (By Mr. JONES.) Did he say anything else?

A. No; not that I am aware of.

Q. Those are the only questions you asked him?

A. As far as I know; I am not aware I asked him anything else.

Q. (By Mr. LATHROP.) Did you make any entries on the "Olinde's" log?

A. Yes, sir; I wished to warn him. I warned him through Mr. Eustis orally first, and then I warned him on the register, or whatever it might be. I wanted to mark it on the log through Mr. Eustis, I told him, but they brought a small book and said that was the proper thing to mark it down on, and I told him not come around when came back as

262 there might be danger of his being captured if he came too close. I think that was about all. Mr. Eustis and him spoke afterwards in French, which I didn't understand, but that was outside of any duties that I had to do on board there.

Q. How long had the "Yosemite" been on that station prior to that date?

A. I think we went there on the 25th of June.

Q. (By the COURT.) Was there any other blockading vessel there?

A. The "St. Paul" was there when we went there, sir. She left on the 26th.

Q. (By Mr. JONES.) Was she part of the blockading fleet?

A. The "St. Paul," sir?

Q. Yes.

A. She was at the time. She had been on there before. I don't know when she arrived there.

Q. When did she go away?

A. On the 26th of June.

Q. You are sure she left on the 26th?

A. I kept a small log of it. [Referring to book]. I am almost sure. Yes, sir; she went out of sight at the time; I didn't see her afterwards while we were there.

Q. You mean by the "time" on the 26th of June?

A. On the 26th of June she left.

Q. (By the COURT.) There was no other blockading vessel on that station?

A. No, sir.

Q. (By Mr. LATHROP.) Had you had any experience, or did you while on the blockading station there, have any experience as to the range of the guns of the shore batteries?

A. Yes, sir.

Q. From what battery?

A. The battery away down below the Morro; he fired on us several times, and the range was about 6¼ miles.

263 Q. Now, previous to the 4th day of July had you warned any other vessels who were approaching or passing the port of San Juan?

A. Yes; we had warned some of them. [Referring to book.] Yes, sir; we warned on the 3rd of July an English steamer.

Q. Bound for where?

A. She was bound to Kingston, Jamaica; called the "Cayo Blanco."

Q. (By Mr. JONES.) Was she coming out of San Juan?

A. No, sir; she was from England.

Q. Merely passing?

A. She was passing; passed right close in.

Q. (By Mr. LATHROP.) How far from the shore did she pass?

A. About, I should say, 5 miles, as near as I can remember. Her papers were all right.

Q. What other vessels?

A. There was the "H. L. Pollock," of Belfast, Ireland. She was from Maracaibo, bound for Farijaro. That is about 40 miles to the eastward. She was half loaded with sugar.

Q. Any others?

A. Not previous to the 4th of July, or 5th. There was no other.

Cross-examination by Mr. GOVIN:

Q. Didn't you tell the captain of the French vessel that when he again passed by the port of San Juan he would find several, perhaps six, vessels blockading the port?

A. No, sir.

Q. Did you have any conversation with the captain about the force of the blockading force?

A. No, sir; Mr. Eustis conversed with him afterwards, but
264 that was on matters outside of the duties we were on board altogether.

Q. (By the COURT.) You do not understand French, as I understand it?

A. No, sir.

Q. (By Mr. BRYAN.) You had no communication with him save through Mr. Eustis?

A. Only what I have told you of.

Q. You had no communication with any other officer on board representing the master other than through Mr. Eustis?

A. About themselves?

Q. Yes.

A. No, sir.

265 ROBERT H. TODD, called by the Government as interpreter on the examination of the witness Sergio Noa Lara, was duly sworn.

Mr. GOVIN. I would like to inquire as to the competency of the translator. I do not know that we are prepared to accept a translator without knowing as to his competency.

The COURT. Very well.

Q. (By Mr. GOVIN.) How are you familiar with Spanish?

A. Because I have lived for a certain number of years in Porto Rico.

Q. Are you a Porto Rican?

A. I was born in St. Thomas, but when I was six years old I went to Porto Rico until I was 25.

Q. What occupation did you follow in Porto Rico?

A. In Porto Rico I was a boy then, and afterward, after I was graduated, I was employed there by the Government.

Q. In what employment?

A. Clerk. I do not know how to translate it into English; the provincial deputation they called it.

Q. Did you know this witness there?

A. I knew him as a boy; yes.

Q. Are you a friend of his?

A. Of his family.

Q. Did you come up on the same steamer with him?

A. No, sir; it is ten years I am here.

Q. Did you see him when he arrived?

A. I saw him when I went on board.

Q. When was that?

A. That was on Saturday last.

Q. Have you been with him since?

A. Not until yesterday, in court.

266 Q. Have you ever translated marine documents or testimony relating to maritime matters?

A. Never.

Q. Have you translated in court before?

A. Never.

Q. (By Mr. JONES.) Are you familiar with maritime terms?
A. In a general way; yes, sir.
Q. What do you mean by generally?
A. By hearing everyday conversation and reading about them.
Q. Did you ever act as interpreter in a maritime case?
A. No, sir.
Q. (By the COURT.) What is your occupation now?
A. I used to be a clerk in a commercial business.

Mr. JONES. We want to avoid any unnecessary interruption of the proceedings, and our impression is that this interpreter will probably be found to be unsatisfactory, but for the moment we are willing he may go on and try it.

Q. (By Mr. BRYAN.) Have you ever translated English legal documents?
A. Yes, sir.
Q. In connection with law matters?
A. Well, Spanish into English for the firm of Olcott, Mestre & Gonzales; Spanish into English and English into Spanish.
Q. (By the COURT.) What is your present occupation?
A. I have no present occupation now, sir.
Q. You have been engaged in the commercial field?
A. Yes, sir. I have means of my own that are sufficient.
Q. (By Mr. HAGOOD.) When you say you were with the witness on Saturday, you mean you went with Mr. Bryan and myself across to the "Mayflower?"
A. Yes, sir.
Q. And came back?
A. Yes, sir.

267 SERGIO NOA LARA, a witness called on behalf of the Government, being duly sworn through Mr. Todd as interpreter, testified as follows:

Examined by Mr. HAGOOD:

Q. Ask him how old he is.
A. 31 years old.
Q. Ask him of what country he is a native.
A. San Juan, Porto Rico.
Q. Ask him if he is a man of family.
A. Yes, sir.
Q. Married?
A. Yes, sir.
Q. Ask him if his parents live in San Juan.
A. Yes.
Q. Ask him if his father is in business there.
A. His father has business there.
Q. In San Juan?
A. In San Juan.
Q. Ask him if he holds at present any position under the Spanish Government.
A. Until he left Porto Rico he was in the employ of the Government as telegraphic operator.

Q. What Government?

A. The Spanish Government.

Q. Ask him when he left Porto Rico.

A. The 3rd of October.

Q. Ask him if he has any rank in the army or under the Spanish Government.

A. He says he is what they call a second operator, which is the same as a first lieutenant in the army; it is similar.

Q. Ask him how long he has been in the employ of the Spanish Government.

A. Five years.

Q. Ask him what scholastic training he has had; what schools he has been to.

A. In the public schools, primary and Civil Institute, in which he took the degree of A. B.

Q. Where is that institute?

A. In San Juan.

Q. When he left that institute, what did he do?

268 A. He was employed by the French Company on the railroad in Porto Rico.

Q. He has been in the employ of the Spanish Government how many years?

A. Five years.

Q. What were his duties under the Spanish Government; what position was he employed in?

A. He says under the Spanish Government the telegraph business is together with the post-office business, and he had one of those positions.

Q. Ask him if the telegraph business is under the control of the Spanish Government in Porto Rico.

A. Yes, sir.

Q. And he was employed in that service?

A. Yes, sir.

Q. How long had he been in that particular service?

A. Five years, as he said before.

Q. At what places on the island of Porto Rico had he been stationed?

A. San Juan, Carolina, and Porto Mayaguez, Port Ponce, Salinas. He had served as taking correspondence, the mail, from Mayaguez to San Juan and vice versa on the railroad.

Q. Ask him what duty he was performing in July, 1898, for the Spanish Government.

A. Up to the 5th of July he was in the central office, the telegraph office in San Juan. He quit and went up to Morro Castle to take charge of the station there.

Q. Ask him if he had been continually in the Morro then from the 5th to the 17th.

A. Up until after the war was over he was there.

Q. Ask him if he was in charge of that station, or he was in charge of the station at Morro.

A. He was the chief.

Q. Ask him what sort of a station that is.

A. There is a semaphore in the Morro and there is an office attached—

a telegraphic office attached—and it was at the public service,
269 as any other telegraph office, until war was declared, when it was converted into a Government office only.

Q. Since the declaration of war it had been in charge of the Government—this office?

A. Before the war the wire was connected with the central telegraph office. When the war was declared the wire was cut and connected with the general Government office.

Q. Ask him if he went there in the employ of the Spanish Government.

A. Yes, sir.

Q. As a Spanish officer?

A. Yes, sir.

Q. Ask him what his duties were in that station?

Mr. GOVIN. Doesn't he mean a Spanish official? There is a distinction in the word "officer." He may convey that he is an officer either on the military or naval service. He may be an official of the Government and not be an officer of the army or navy.

The COURT. Ask him if he had any commission from the Spanish Government.

A. Yes; as telegraph operator.

Q. (By Mr. JONES.) Is that a military commission?

A. He says in time of war they are considered as military men and are under the military law.

Q. (By Mr. HAGOOD.) Ask him what his duties were as an official or officer in the Morro.

A. To communicate to the Government everything that could be seen on the horizon; everything seen on the horizon and the presence of every vessel.

Q. Ask him to explain to the court and counsel where this Morro is situated and the waters it overlooks.

270 A. It is situated at the outside of the city and it overlooks all the horizon. You can see the horizon from the Morro.

Q. Ask him if it is at the entrance of San Juan Harbor.

A. At the entrance; yes, sir.

Q. Ask him on which side of the entrance it is.

A. At the left, going in.

Q. Ask him to tell us his precise duties in the Morro at the time he was stationed there.

A. To communicate to the Governor-General the movements of all vessels which were blockading the city—the capital; the presence of any vessel that could be seen, and the movements done by the American vessels or any other vessels that were captured.

Mr. GOVIN. I think the witness said "report."

The INTERPRETER. That is right; he reports the movements; communicates.

Q. By what?

A. By telegraph.

Q. Communicate to whom by telegraph?

A. Communicate only with the palace of the Governor-General.

Q. (By Mr. GOVIN.) Who gave him the information which he communicated?

A. Those that they (meaning the telegraph people) observe themselves and also those that were communicated by the men in charge of the semaphore.

Q. The semaphore officers?

A. Yes, sir.

Q. (By Mr. HAGOOD.) Ask him if those officers he has just described were all stationed in the same room or apartment.

A. Yes, sir; in the same room.

271 Q. Ask him to describe what facilities were there for seeing vessels that were blockading or approaching the harbor.

A. He says the house with the semaphore is over the castle; above the castle.

Q. (By Mr. GOVIN.) Ask him if the telegraph office is there.

A. They were together, both the telegraph office and the semaphore office. It is a circular house with different windows in all directions.

Q. (By the COURT.) Telegraph office. Is there a tower and the telegraph office in a tower? Is that the fact?

A. Yes, sir.

Q. And the office is in that tower?

A. In that tower; yes, sir.

Q. (By Mr. HAGOOD.) Ask him if there is a direct wire, or if there is any wire from that office directly to the Governor-General's office, or to the headquarters he described.

A. Direct to the office of the Governor-General.

Q. Ask him if he was on duty on the 17th day of July last.

A. He entered on duty at 8 o'clock on the morning of the 16th and left duty at 8 o'clock the next day. He should have left duty at 8 o'clock the next morning, but on account of his fellow telegraph officer not arriving in time he stayed there until 3 o'clock in the afternoon that he came.

Q. Then he was on active duty from 8 o'clock on the 16th until 3 o'clock p. m. on the 17th?

A. Until 3 o'clock in the afternoon of the 17th.

Q. Ask him if he himself saw, with his own eyes, the French steamship "Olinde Rodriguez" at any time on the 17th.

A. Yes, sir.

272 Q. He saw her himself?

A. Yes, sir.

Q. Ask him if he recalls what sort of a morning it was; the weather?

A. Clear.

Q. Ask him what orders he had in reference to the "Olinde Rodriguez," if any?

A. He had instructions to look out for the "Olinde Rodriguez," if she approached the harbor—the entrance; if she could be sighted.

Q. Ask him when he got those orders?

A. The day before; the 16th.

Q. Ask him if he carried out the orders?

A. Yes, sir.

Q. Ask him at what time in the morning or at what time of the day he first himself observed the "Olinde Rodriguez?"

A. With his own sight, do you mean?

Q. Yes.

A. Between 7.30 and 8.

Q. Ask him when she was first reported to him before he saw her himself?

A. At 6.40.

Q. Ask him, when it was reported to him that the "Olinde Rodriguez" was sighted, what he did?

A. He communicated to the Governor-General that the "Olinde Rodriguez" could be seen.

Q. Ask him how long after that it was that he himself saw the "Olinde Rodriguez?"

A. He says, by his own eyes, he saw her between 7.30 and 8.

Q. Ask him if he had to use any glasses to see her, or if he saw her with the naked eye?

A. Between 7 and 7.30 he was looking at her with the glasses. After that he could see her with his plain eye.

Q. Ask him to state in what direction the "Olinde Rodriguez"
273 was coming towards him, or was sailing, when she was first sighted at 6.40, as he has told us about?

A. In the direction of northwest to the south.

Q. Give the direction she was from him, he being in Morro; the direction she was from him at the time she was sighted?

A. Directly to the Morro her course was.

Q. I want you to ask him in what direction—that is, according to the compass—in what direction she was from the Morro, his station?

A. He says he had no compass there.

Q. Ask him in what direction the "Olinde Rodriguez" was coming; what way she was pointing?

A. To the Morro.

Q. Ask him if he can tell from her direction if she was approaching the port of San Juan, or was it a course which would take her by to pass the port of San Juan?

A. By the course she was taking she was coming to our port.

Q. Ask him if he communicated that at 6.40, when she was first sighted, to the Governor-General?

A. He communicated it.

Q. He did?

A. He did.

Q. Ask him if there was a record kept of these communications?

A. No record.

Q. Ask him what the communication was that he made to the Governor-General?

A. The first?

Q. Yes; the first communication.

A. That to the northwest a vessel could be seen.

Q. That to the northwest a vessel could be seen?

A. Yes, sir.

Q. Ask him when the next observation was made—that being made at 6.40—when the next observation was made, which he reported, and what it was?

A. The next was that the vessel could be seen—the hull of the
274 vessel could be seen—and by the hull it could be seen that it had some appearance of the "Olinde Rodriguez."

Q. Ask him when the next report was that he made and what he saw?

A. The next was that the steamer "Olinde Rodriguez" was coming in the direction of the port.

Q. Ask him about what hour that was?

A. About 7.15.

Q. Ask him what was the next observation he made and reported?

A. That the American cruiser that was blockading was going towards the "Olinde Rodrigues."

Q. Ask him the next observation that he reported?

A. At 8.15, that the cruiser "New Orleans" fired a shot to the French steamer, and that the American cruiser put up a signal ordering him to stop.

Q. Ask him after the American cruiser had fired a shot at the "Olinde Rodriguez," if she changed her course, or if the "Olinde Rodriguez" changed her course after the shot was fired, and what she did?

A. She changed her course, going towards the "New Orleans."

Q. How much did she have to change her course; in what direction did she change?

A. Towards the east.

Q. Ask him if she had changed her course prior to or before the shot was fired; if at any time she had changed her course other than the course in towards Morro which he described?

A. Only after the shot was fired.

Q. Ask him if he saw the shot fired; saw the smoke or effect of it?

A. He saw it. He did not see the projectile. That is the reason he communicated to the governor that it was a blank shot.

275 Q. Ask him if the "Olinda Rodriguez" turned and went towards the "New Orleans" when she fired the shot immediately, or did any length of time elapse before she did so?

A. After the shot was fired, she changed her course right away and went towards her.

Q. Ask him what he next observed after she had changed her course and reported to the Governor-General?

A. He said that he communicated with the governor——

Mr. GOVIN. Didn't he say "We reported?"

The INTERPRETER. He says himself alone; he communicated that it could be seen a bark northwest.

Q. That a bark could be seen northwest?

A. Yes, sir.

Q. A sailing vessel?

A. A sailing vessel.

Q. Ask him what else he reported in respect, not to the bark, but in respect to the "Olinde Rodriguez" and the "New Orleans," the American cruiser?

A. That from the American cruiser a launch was put out towards the French steamer.

Q. Ask him how long the "Olinde Rodriguez" and the "Orleans" were together out there, if he knows, and if he communicated?

A. They were together up to 3.20 in the afternoon.

Q. And what then became of the "Olinde Rodriguez?"

A. From the French steamer the American launch went back to the "New Orleans," and after a little while from the American vessel a few boats went towards the French steamer.

Q. He said that the "Olinde Rodriguez," from the time of the first observation at 6.40 to 8.15, at the time the cruiser fired the shot, was heading directly in to the port of San Juan. Ask him how the
276 ship's masts of the "Olinde Rodriguez" appeared to him before the shot was fired?

A. In a vertical position [indicating].

Q. In a position relative to each other and relative to him, could he see both masts or one before the shot was fired?

A. Only one; the front one.

Q. Ask him after the shot was fired what about the masts then; how did they appear?

A. Then he could see both masts.

Q. Ask him if the "New Orleans" made any signals before the shot was fired, and if he saw them?

A. No, sir; I did not see any.

Q. Ask him if he saw any signal at all from the "New Orleans?"

A. The one made when she ordered her to stop.

Q. Ask him if he knows what that signal was?

A. "J. W.;" that is what they call it.

Q. In the International Code?

A. In the International Code of the semaphore.

Q. She made the signal "J. W.?"

A. Yes, sir.

Q. He said that he had been as chief in this office at the Morro signal station. Ask him of which one he was chief, the semaphore or telegraph?

A. Of the telegraphic station.

Q. Ask him where he had been on duty just prior to the 5th of July, when he was assigned to that duty?

A. In the central office of the telegraph.

Q. Where; at San Juan?

A. At San Juan.

Q. Where was that central office located?

A. Tetuan street, No. 1.

Q. Ask him when he first knew of the blockade of San Juan?

A. That he knew it by the papers; newspapers.

277 Q. Before he went on duty in the semaphore office, or telegraph office?

A. Yes, sir; before.

Q. He said that he had orders on the 16th to look out for the "Olinde Rodriguez?"

A. Yes, sir.

Q. Ask him if he knows whether or not of his own knowledge any preparations were made at the port of San Juan to receive the "Olinde Rodriguez?"

A. Yes; they were prepared.

Q. What were they? State to the court and counsel.

A. What kind of preparations do you mean?

Q. What was done in expectation of the arrival of the "Olinde Rodriguez?"

A. He says that at the Morro Castle they had instructions, as in all other batteries, that if any vessel intended to come in the port—that if any vessel wanted to come into port and was prevented by the blockading ships, to protect the entrance of any vessel with shot from their batteries by firing.

Q. Ask him if he knows whether or not on the 17th, before the "Olinde Rodriguez" was changed from her course by the firing of this shot from the "New Orleans" and had directed her course directly to the "New Orleans"—if he knows prior to that moment any preparations were in progress to protect the "Olinde Rodriguez" in her entering into San Juan?

A. They were always prepared to protect entrance, because the artillerymen always slept next to the guns, and also, the guns are always loaded.

Q. Ask him if he knows whether or not on the 16th to the 17th the official mail for France had been prepared and was ready to be deliv-
278 ered to the "Olinde Rodriguez" when she entered the harbor?

Mr. JONES. We object to that if your honor please. How can the action of the postal authorities at Porto Rico, without showing a communication with this vessel, affect us or effect her?

Mr. HAGOOD. I submit no action of the postal authorities could be binding upon the ship, but this officer——

Mr. JONES. You are trying to bind us now by this evidence. It is a criminal case; highly criminal, and it is sought to bring in a transaction, if it be a transaction at all, with somebody entirely foreign to this ship without showing any communication or any knowledge of it on the part of the ship.

Mr. HAGOOD. It occurred to me that this witness having testified that he had received orders from the authorities to look out for the ship, and being engaged in his duties he did look out for it and make these reports, and it being further in testimony that the telegraph officer, etc., were under the direction of the Government, the mail being also under the direction of the Government, I thought it competent to ask this witness if he knew of his own knowledge whether or not the French mail was prepared on that date, he could state, just as well as if he knew that the batteries were being prepared to protect them. I am not asking him as to hearsay, but anything that may be in his knowledge.

The COURT. If in the course of his employment as telegraph operator there passed through his hands or over the telegraph any commu-
279 nications from the steamship, or her agents, at any other port showing that she intended to stop there for the mail, that would be competent testimony.

Mr. JONES. Yes; we agree to that.

The COURT. But what was done by people in Porto Rico without the knowledge of the master of the "Olinde Rodriguez" would not be proper testimony unless it was done by the agent of the steamship. If he has knowledge of anything being done by the agent or agents of the steamship company at San Juan, indicating that they were preparing to receive the "Olinde Rodriguez" and to load either passengers or mail upon the "Olinde Rodriguez" that would be binding; that would be

competent testimony. Now, if the witness has any knowledge of that, or anything of that nature, he may state it.

Mr. HAGOOD. Whatever knowledge he might have had would not have been derived through the offices of the steamship, and I withdraw the question. It would not have come in that way.

The COURT. I do not limit it to that. If you can show that preparations were being made by any persons who had authority to represent the steamship company, you may.

Q. (By Mr. HAGOOD.) Ask him, then, Mr. Todd, if he knows the agents of the "Olinde Rodriguez," the Compagnie Generale Transatlantique at San Juan?

A. He knows them.

Q. Ask him if he knows whether or not they had made any preparations to receive the "Olinde Rodriguez?"

Mr. JONES. We object to that.

Mr. HAGOOD. If the agent made these preparations to receive the ship.

280 The COURT. We will take that testimony if he knows anything about it.

Q. Ask him if he knows of his own knowledge.

A. He says that he don't know, because the agents, when anybody approached him and asked him if the steamer would come, they said if they could come in they would; if the vessel could come in she would do it.

Mr. JONES. That is not responsive.

The COURT. Yes; strike it out. The answer is he does not know.

Mr. HAGOOD. Strike it all out.

Mr. BRYAN. I beg pardon. If that was the answer of the agents, that if she could she would come in, that is somewhat the attitude of this case I take it. That is just what she was trying to do, if she could. That is the theory of our case and we think we have partly established it up to this time. I would ask that that be not stricken out if the witness's answer is that they said she would come in if she could.

The COURT. That is not responsive to the question. If you amend the question the court will rule on it.

Q. (By Mr. HAGOOD). Ask him if he had any information from the agent—if he knew of any information or had information from the agents of the Compagnie Generale Transatlantique whether or not the "Olinde Rodriguez" would come into San Juan on the 17th of July or thereabouts.

Mr. JONES. Had information? What kind of information? Hearsay or what?

281 Mr. HAGOOD. From them; the agents.

The COURT. Do you ask him if he had conversation with the agents?

Mr. HAGOOD. Yes, sir.

The COURT. Put it in that shape then.

Q. (By Mr. HAGOOD). Ask him if he himself in person had any conversation with the agents on that subject?

A. No.

Q. He had none?

A. None.

Q. Did he hear the agents communicate to any other person than himself—in his, Mr. Lara's presence, communicate with any other person?

A. No.

Q. Ask him, Mr. Todd, if anybody else beside himself—any other people or any other person in San Juan witnessed these movements and the shot, etc., what transpired out there as he has described it between the "Olinde Rodriguez" and the American cruiser?

Mr. GOVIN. I object. How can he say? He can say they were present.

Mr. HAGOOD. He can say as to whether three people or three thousand people were present and saw what he saw.

Mr. GOVIN. Ask him the question.

The COURT. You can ask the witness if there was any other person with him at the time who witnessed these occurrences.

Q. Ask him that question suggested by the court, if there was any other person with him on that morning?

A. The fellows in charge of the semaphore.

282 The COURT. Now, do you mean to ask if anybody in San Juan saw these movements? Is that what you wish to ask?

Mr. HAGOOD. I was under the impression that I could show that this thing, having become noised abroad through the city of San Juan, there were large crowds of people on the water front watching this chase. I thought the witness might be able to testify to that.

The COURT. He can testify to that—whether he saw people on the water front looking at it; but what they saw he could only know through reports to him, which would be hearsay, and of course that would not be competent testimony. He can describe any facts.

Q. Ask him if there were many people on the water front, whom he himself saw, where they could see the movements of the vessels; were in a position that would enable them to see what transpired out there before San Juan that morning?

A. Yes, sir; there were many people.

Q. Where were they?

A. In all the walls on the north outside of the city, from which can be seen all the horizon.

Q. Will you ask him, Mr. Todd, how he came to New York?

A. He received a communication and came—from the secretary of the interior.

Q. He received a communication from the secretary of the interior of what Government?

A. Of the Spanish Government.

Q. To do what?

A. To present himself in the palace of the Governor-General and to prepare himself to start to New York on a commission from the French embassy. He went to the palace and there the secretary of the

283 Government told him to go and see the French consul, and he after that went to see the French consul. After he got to the consulate he found a letter in his house from the French consul at Porto Rico, which letter he can show, because he has it with him.

Q. Ask him to let the court look at the letter.

(Witness produces a letter and hands it to the court and counsel.)

Q. Ask him if he had any orders from his Government in relation to this matter to report to the United States Government?

A. Not to the American Government.

Q. To whom was he ordered to report?

A. To see the French consul; and then the French consul told him he had to come here to New York, that he would have to sail on a Sunday—last of September. The day he received this communication he had to go to Ponce to take the steamer "Philadelphia," that sailed from Ponce to New York.

Q. (By Mr. BRYAN.) Why did he not go?

A. After the French consul and himself had agreed in the way he should come here, he told him that when he passed by his house in San Turce he would give him a pass from General Brooke so the American troops would not put him to inconvenience to pass. That he started from San Juan to Ponce by coach that Sunday, and when he arrived to the bridge which separates the smaller capital from the main island he was detained by Mr. David Noble, and he delivered him the pass of General Brooke, and also two letters from the said French consul to be put on board the "Mayflower." With those two letters he went on board the "Mayflower" and gave them to the captain of the vessel,
284 but after that the French consul, through a letter, claimed from him $10 which he delivered to him to pay his passage from San Juan to Ponce by coach, which $10 he returned. Mr. David Noble told him that the French consul said that he should not go by Ponce but should go by the "Mayflower," which had voluntarily offered to take him on board; that they took him to the presence of Admiral Schley, and Admiral Schley sent him on board the "Mayflower." Nothing else. He also received $20 gold from the French consul to pay his expenses, his petty expenses, for which he gave a receipt or duplicate, but up to now he does not know for account of whose Government he is here; who would pay him his expenses and family expenses on here and all that he is losing; who will attend to his family in Porto Rico.

Q. He does not know up to this time?

A. No.

Q. You have the Spanish document summoning you to the palace and telling you to put yourself in charge of the French Government?

A. Yes, sir; here it is.

Mr. BRYAN. We may state that it appears that the American Government, there being no American consul at San Juan, asked the courtesies of the French Government to have this witness brought. It was in that way that he was brought, as will appear from the document.

Cross-examination by Mr. GOVIN:

Q. Do you know Antonio Quente y Aubarede?

A. He is the adjutant of the commanding general of the navy at Porto Rico.

Q. Do you know Antonio Gossal and Bernardino Fereire?

A. They are two gentlemen in charge at the semaphore station.

A recess was here taken until 2.30 p. m.

285 AFTER RECESS.

SERGIO NOA LARA.

Cross-examination continued by Mr. GOVIN:

Q. Give me an exact description of the building in which the semaphore station and telegraph office is situated?

A. The tower of the semaphore is on the upper part of the Morro Castle.

Q. Did he say the tower?

A. It is a circular tower.

Q. Do you mean that the room in which the semaphore office is situated is in the top of the tower?

A. He says that there is only one floor above the Morro, where the offices of the both semaphore and telegraph are.

Q. Where do the semaphore officers view the horizon from?

A. On the same floor in the same building as the semaphore and telegraphic office.

Q. Is there any apparatus by which or through which they view the horizon in search of the vessels?

A. There is a big glass from which they look at the vessels, and other small glasses.

Q. Where is the big glass situated?

A. In the same place, because the room is very small.

Q. In what part of the room?

A. In the centre of the room, so that it can turn around the whole room.

Q. What are the dimensions of the room?

A. About two metres in diameter.

Q. What is the length of this long glass?

A. About a metre.

Q. Then this long glass requires the full space of the room to sweep around to the different points of the horizon?

286 A. It is mounted on a tripod of wood—a wooden tripod—in the middle of the room. This tripod goes up or down, according to the size of the person who wants to look through it.

Q. In turning it to the different points of the compass, how is it operated?

A. He says as he repeated there is no compass, but the glass is directed to the point where they see a vessel.

Q. I have not asked him whether there was a compass or not. I have asked him that in endeavoring to see the different points of the compass—that is, whether it is east, west, north, or south—how is this instrument operated?

A. It is very easily moved to one window or the other.

Q. That is to say, by turning it?

A. He says it is very easily moved in all directions.

Q. What telegraphic apparatus does he use?

A. Morse.

Q. To what is it attached; is it hanging in the air?

A. A very small table; a campaign table.

Q. Where is this table?

A. I could show it.

Q. Ask him to draw a diagram of the room where the semaphore officers operated and where the long instrument or telescope is situated, where his desk is and where he sits?

A. He says he is a very poor draughtsman. [Witness makes a pen and ink draft.] This is the entrance to Morro Castle (marked "A"). This is the yard. It goes up a steep hill to the upper part of the Castle, turns around to the tower in which the semaphore is situated (marked "S"). This is the tower of the semaphore (marked "S-2"). These are windows all around; high windows, up to a man's chest, more
287 or less, from the floor to the window casement. There is a table there for observation; a writing table; a small table which will be about 75 centimetres, where is a Morse apparatus and the telegraphic operator. There is a tripod in the centre (marked "T"), where is mounted the telescope.

Q. To what side of the tower is the sea?

A. On this side. All this is the sea [indicating].

Q. The sea is north?

A. Here. (The ocean is marked "N").

Q. Where is the entrance to the port?

A. Here (marked "C"). That is the entrance of the port of San Juan, turning around.

Q. Then, sitting at his desk, he could not possibly see out of the windows?

A. He could not see, but he could see if standing up.

Mr. GOVIN. I have not asked him whether he could see it standing up. I asked him whether he could see it sitting down.

Mr. BRYAN. I beg pardon, on cross-examination the witness can give an explanation to his answers.

The COURT. Of course he could see it standing up, I suppose.

Mr. GOVIN. I admit he could see it standing up.

Mr. BRYAN. He has not said he was sitting or standing previously.

Q. How many men operated the semaphore?

A. Every day one.

Q. Did he operate it at all, the witness?

A. Sometimes. He wants to explain that the semaphore is an apparatus by which you speak to a vessel.

Q. Did not the man who operated the semaphore stand prac-
288 tically on the roof of this turret?

A. He says no; in the same tower, the man in charge of the semaphore sitting at his table, and here the telegraph operator, and two marines here at the windows observing the sea.

Q. And all this in a room 6 feet in diameter?

A. Without any movements, and when there was anything ——

Q. Did he ever operate the semaphore by order of the Government, or the officer in charge of the semahpore office?

A. Many times the semaphore man, tired out, used to leave them in charge of the semaphore to look out and tell him what happened, but his obligation had no relation to the marine, but done voluntarily; at the same time that whenever any of the telegraph people were going out for necessity, in that instance, if the Government should call up the apparatus, the man in charge of the semaphore would answer.

Q. Then, as a matter of fact, you were simply the telegraph operator at the semaphore station.

A. In reality he was the only employee of the Government who transmitted to the Government whatever the man in the semaphore should tell him to transmit.

Q. In testifying this morning when you said that you transmitted to the Governor's Palace the movements of the vessels, you meant to say that you transmitted the information given to you by the semaphore men?

A. He transmitted whatever the man at the semaphore told him, and many times what he saw himself.

Q. When did you first report by telegraph that a vessel was in the offing?

A. At 6.40 in the morning.

289 Q. Was that a report of what the semaphore officer told him?

A. Yes; the man in the semaphore told him to communicate to the Government palace that at the northwest a vessel can be seen without being able to see what kind, on account of the distance of the vessel.

Q. Where was this semaphore officer standing when he told him that; was he standing to the right, left, or back of him?

A. He was in that position [indicating].

Q. Repeat the question.

A. He was looking at the northwest.

Q. I repeat the question. Where was the officer standing?

A. In the centre of the room, looking out of the glasses; at the telescope through the window, which was in the direction of the northwest.

Q. Then, as a matter of fact, you did not see the vessel or know anything about it except what was reported to him by the semaphore officer?

A. He says that when the officer told him he stood up and looked out and saw the vessel himself.

Q. He looked through the telescope?

A. Yes, sir.

Q. How much of the vessel could he see?

A. He could only see the smoke and the shadow of the vessel.

Q. Could he tell what course the vessel was making from what he saw?

A. He could not, because it was too long a distance.

Q. How far was, apparently, the smoke from the land?

A. He cannot say, because he don't know; he is not acquainted with the distance in maritime.

Q. He means by saying he is not acquainted with the maritime distance that he is not accustomed to tell distances on the water?

A. Yes, because he is not a marine.

290 Q. What was the second report that he made?

A. The vessel which was seen by the northwest has a hull similar as the French "Olinde Rodriguez."

Q. Was this report the report of the semaphore officer?

A. The report of the man in charge of the semaphore office.

Q. So he didn't know anything about the matter?

A. Nothing.

Q. What was the report that followed that one?

A. The vessel which is seen is the French "Olinde Rodriguez."

Q. Was that the report of the semaphore officer to him?

A. It was of the semaphore man, because he was used to the semaphore, because——

Q. That is not it.

A. He was told by the man at the semaphore to say that to the governor, because he was acquainted with the "Olinde Rodriguez" on account of seeing it many times come into port in the harbor.

Q. The witness did not know the "Olinde Rodriguez?"

A. He did not know it.

Q. At that time did he personally see through the telescope the "Olinde Rodriguez?"

A. He saw it a little later.

Q. How much later.

A. About 7.30, when it was certain she was coming in the direction of the port.

Q. Then, before 7.30 all his messages were from information received from the semaphore officer?

A. Not only because he told him, but because he called him to observe himself.

Q. What did he observe the times that he was called?

A. The same movements that he communicated to the palace.

Q. Where was the "Olinde Rodriguez" at the time he saw her at 7.30?

291 A. She was in the northwest and coming in the direction to the Morro.

Q. How far from the Morro?

A. He can not say the distance, because he don't know it, but he could be seen by the simple eye; he had no apparatus to ascertain the distance.

Q. Was it very close to the shore?

A. Quite near.

Q. What does he mean by "quite near?"

A. Enough to be seen by the plain eye.

Q. Without the aid of glasses?

A. Yes, sir.

Q. Does he know the course that a vessel would have to take from Puerto Plata to the Culebra Passage?

A. He does not know that.

Q. Do you know where Culebra is?

A. He has not been at Culebra.

Q. Did you ever see any vessels passing the Morro going to St. Thomas?

A. Never.

Q. Then you don't know anything about the courses a vessel would take to go from Puerto Plata to St. Thomas?

A. He says he don't know anything about the course, but he don't understand why they should come so near to Porto Rico to go to St. Thomas.

Q. Why does he say that?

A. It is getting too near the coast to take a different course.

Q. How does St. Thomas bear from the Morro?

A. He does not know.

Q. Why does he say it is too near the shore to go to St. Thomas if he does not know anything about it?

A. Because to go to St. Thomas he don't think it is necessary for the "Olinde Rodriguez" to bring the course so direct to the Morro. If she wanted to pass to St. Thomas she would have gone in a straight direction to the east of the harbor.

292 Q. How far, in your opinion, off shore would she have to go to lay a proper course for St. Thomas?

A. From the port, you mean?

Q. Yes.

A. He is not acquainted with that, but he thinks it should not be seen from the Morro.

Q. When he first came on board of the "Mayflower," with whom did he speak?

A. With the captain.

Q. What did you say?

A. He did not say anything, because he cannot speak English.

Q. To whom was the first person that he said something?

A. A gentleman named Noble, who spoke with the captain and showed him a room and there he stayed.

Q. Then, I understand him, he did not utter a word from the time he left San Juan until his arrival in New York?

A. Certainly, because he did not speak the English language.

Q. Who is the first person he spoke with regarding the case he has testified in now?

A. He says he did not speak the language, and this is the first time he spoke about it.

Q. Has he never spoken about this case or his testimony to anyone?

A. He don't know anybody here in New York.

Q. Who told him to bring those letters and papers that he has presented here this morning?

A. He himself brought them so as to justify anything that could happen.

Q. Did you know what you were coming here for?

A. Yes; because the Government told him in the commission.

293 Q. Then I understand him to say that outside of what the Government said in the commission that he has not spoken a single word to anyone regarding the case until he occupied the witness chair this morning?

A. Yes; he says that is the first time he has spoken of this thing, and the reason he brings the documents is because the Government told him he would have to see the French consul here in this case. More so, when the Governor-General called him to his palace, and told him to bear in mind the friendship that existed between the Spanish Government and the French Government. That is the reason why he brought the documents to prove everything that he says.

Q. What is the commission that you received from the Spanish Government; where is it?

A. Which?

Q. He has testified that he received a commission from the Spanish Government.

The COURT. Did you mean his commission to come here or his commission as an official?

Mr. GOVIN. His commission to come here.

(Witness produces a paper.)

Q. Is there anything in this paper to show what the object of your trip to the United States is?

A. Special commission asked by the embassy of France and diplomatic officers in regard to the capture of the "Olinde Rodriguez." This document to the consul.

Q. Then, outside of this he has had no conversation regarding this case, and he did not know what he was to testify to until this morning?

A. Never until then.

Q. Have you ever seen Mr. Bryan, the gentleman that is sitting across from you?

A. Yes; he has seen him.

Q. Where did you see him?

A. On the "Mayflower."

294 Q. Is there any other person in this room you have seen before this morning?

A. Yes; that gentleman sitting there [indicating Mr. Hagood].

Q. Have you seen the interpreter before this morning?

A. Yes.

Q. Did you speak with any of these gentlemen when you saw them?

A. He spoke with them.

Q. What did you say to them?

A. The same that I have said now here in the court.

Q. Then how is it he said a few moments ago he had never said a word about this case to anyone until he came on the witness chair, and now he says he told these gentlemen substantially what he has testified to?

A. He says he is not acquainted with this place. He thought they were judges, and that is the reason he thought they were all the same.

Q. Does his belief that they were judges justify him in saying that he had not spoken to anyone?

A. In his belief that they were magistrates or judges he has told them the same thing he has stated here now.

Q. Why didn't he say that first, when I asked him if he had spoken to anyone?

A. He did not remember.

Q. He means to say that he did not remember having spoken to these gentlemen two days ago in regard to this case?

A. He says as you did not ask him if he had spoken to any judge or anybody connected with the office, and he meant to say that he did not speak to any particular people outside.

Q. Didn't I ask him if he had spoken to anyone? What motive 295 has he for concealing the fact that he spoke to these gentlemen?

A. He says that he did not hide that he spoke to these gentlemen.

Q. Yes; but he did. What did you say to these gentlemen, and what did they say to you? Relate the whole conversation.

A. The same questions asked here before the judge were made to him before.

Q. Then you knew beforehand what questions were to be asked you to-day?

A. He says that they were to ask him, but he did not know what they were going to ask him about it.

Q. Did you see the "Olinde Rodriguez" and the "New Orleans" when they came together after the shot was fired?

A. Yes, sir; he saw them; they were seen by everybody in Porto Rico.

Q. Was this meeting east or west of a north and south line drawn through San Juan?

A. The "Olinde Rodriguez" was coming from the northwest and the "New Orleans" from the east. He says he has a note of it, if you want it.

Q. Yes; I should like to see it. (Question repeated.)

A. He says the "Olinde Rodriguez" was coming from the northwest.

Q. (By the COURT.) But at the place of meeting, when they met and lay alongside of each other, was it east or west of a line drawn north and south from San Juan?

A. He says he does not understand.

The COURT. Explain to him. This was west and this east. This is a line running north and south from San Juan. The place of meeting—was it east or west of that line?

A. It was east.

Q. (By Mr. GOVIN.) About how far east?

A. He says he can not definitely say what distance, because he is not a marine.

297 (By the COURT.) Does he understand perfectly now, and say it was to the east of the line drawn north and south?

A. This is Morro Castle. This is north, and this is west, and this east. That is the "Olinde Rodriguez" and this the "New Orleans" [illustrating]. The "New Orleans" fired to him and he changed the course, and the other one also, and both stopped there.

Q. Let him mark it on this where they stopped.

A. I could not put the exact distance, but they stopped east.

Q. East of that line?

A. Yes.

(The diagram used in the witness's examination on this subject is marked as follows: "The U. S. *vs.* 'Olinde Rodriguez.'" This is the diagram referred to by witness Lara on page 79 of stenographer's minutes, "C. A. P., October 18/98," and it is hereto attached.)

(Here follows diagram marked p. 296.)

Q. (By Mr. GOVIN.) When did you first see the "New Orleans?"

A. He says he saw her as he saw all the other vessels, but he don't know which was the "New Orleans."

Q. When did he know it was the "New Orleans?"

A. He said he knew it was the "New Orleans" after it captured the "Olinde Rodriguez," because the papers said so.

Q. Then he did not particularly notice the position of the "New Orleans" that morning?

A. He was not to give names to the steamers; only the enemy's ships, he called them.

Q. Then the semaphore officers did not tell him it was the "New Orleans?"

A. He says he did not say the "New Orleans," and never said the name of a vessel; only the enemy's vessel which he located.

298 Q. Then, as a matter of fact, he does not know either the position of the "New Orleans," or of the "Olinde Rodriguez," or the distances they were apart from each other, or the distances they were from shore that morning?

A. He says he knows the position of the "Olinde Rodriguez" when she was coming.

Q. What was that position?

A. He says they were coming in a direction from the northwest, and he could not see but one mast, because the front one——

Q. What course would the vessel have to be taking so that he would see her in that position?

A. From the northwest to south, and in the direction of the Morro.

Q. Does he know whether a course of south 69 east would show the masts closed?

A. He says he don't understand what you mean about 69.

Q. Then he does not know what course the "Olinde Rodriguez" was on?

A. The only thing he can say is that the "Olinde Rodriguez" intended to come in, or was coming in, the direction of the port.

Q. Does not he mean that it appeared to him that the "Olinde Rodriguez" was making for the port?

A. That what was communicated was that she was coming in the direction of the port.

Q. Who communicated?

A. He says he communicated that to the governor because the semaphore man told him so, and because he saw it himself.

Q. He saw what?

A. He saw the "Olinde Rodriguez" coming in the direction of the castle, of the port.

Q. What was the name of the semaphore officers?

A. At daybreak on the 17th, up to 8 o'clock, the name was Antonio Gossal; from 8 o'clock it was Bernadino Fereire.

299 Q. Ask him how he can state positively that the "Olinde Rodriguez" was heading for the port of San Juan, when he does not know what course she would have to take to go to the Culebra Passage?

A. He says it don't take much intelligence to know when a vessel is coming in the direction of the port and when she is going to pass along. That is known by even the most unlearned people in Porto Rico.

Q. Then, as I understand him to say, it is a very simple thing to tell the direction of a vessel at a distance at sea?

A. It is a very easy thing to find out if a vessel is coming into the port of Porto Rico and when she is going to continue her trip.

Q. Do you know what change a vessel sailing a south, 69 east, course, about 12 miles north of Porto Rico, and about 17 miles west of the Morro, would have to make to change to go to San Juan?

A. I don't know anything about that.

Q. You have testified that the semaphore officials kept no record of their signals or their information communicated to the Government?

A. He says he has not said any such thing.

Q. What does he say?

A. He says they make a record of what happened in the day.

Q. Don't they place in that record the vessels that they distinguish on the horizon and the different movements of the vessels?

A. He says they used to do that in the night.

Mr. GOVIN. I move to strike that out as not responsive.

Q. (Question read.)

A. He says they do it, but he don't know in what form they do it; he can't say.

Q. From what did he take these notes [showing]?

300 A. These are notes, a record, made by the telegraphic officers of what they communicate to the governor.

Q. That is partly a copy of what you communicated to the Government?

A. They are a copy taken from what was said to the Government.

Q. Did you notice whether the "Olinde Rodriguez" stopped promptly when the gun of the "New Orleans" was fired?

A. He says no, she did not stop right away, but when the shot was fired and the signal was put to stop she changed her course.

Q. Changed her course where; towards the "New Orleans," or away from her?

A. He says both vessels made one for the other.

Q. Then she went towards the "New Orleans?"

A. Yes; both went toward each other.

Q. And where was she from Morro when the shot was fired; in what direction?

A. Coming in a south course.

Q. Was it north of the Morro?

A. From the northwest to the south.

Q. Then she was north from the Morro?

A. The north was that way and the northwest was here [indicating].

Q. At what time was it that these two ships came together?

A. At 8.15 the shot was fired.

Q. How do you know it was 8.15?

A. Because I had a clock there.

Q. (By the COURT.) Ask the witness if he wishes the court to understand that he never communicated to anyone in Porto Rico before he was summoned here as a witness what he was going to testify to in regard to the movements of the "Olinde Rodriguez."

301 A. He came out, and secretly, on his mission without saying anything.

Q. I know; but before he was summoned as a witness how did the parties who brought him here as a witness know that he was going to testify to what he has if he did not tell somebody what he was going to testify to?

A. A friend of his, Mr. David Noble, whom he has mentioned before, asked him if he could give him a detail of what happened to both

steamers, so as to give it to his friend, the captain of the "New Orleans." He says he told him he would give it if it was not an official thing, just for friendship, because it was not allowed by his Government that he should use official news like that, and he gave it in the house of the American consul in Porto Rico; in San Juan.

Q. (By Mr. GOVIN.) How came you to make the notes which you have referred to here?

A. He took them to give them when the captain of the "New Orleans" asked for them.

Q. Then he gave a copy of that paper to his friend to deliver to the captain of the "New Orleans?"

A. He gave it in the presence of the American consul in Porto Rico.

Q. Was there an American consul in Porto Rico at the time of the war?

A. He said it was not during the war. The protocol of peace was signed already, and the American was there.

Q. Is there an American consul there now?

A. He said there was a Mr. Hanna there who was consul before the war. He don't know if he is consul now.

Q. What is the name of that friend?

A. Mr. David Noble, an English subject.

Q. Where is he?

A. In Porto Rico, San Juan.

302 Q. Did he ever speak to you about this case?

A. He did not tell me for what reason he wanted it, but said the captain of the "New Orleans" wanted that copy, and he thought it was for some memorandum or something that he gave it.

Q. Don't you know that the government of Porto Rico has changed from that of the Spanish Government to the American Government?

A. He says to his knowledge he is a Spanish official here in New York yet.

Q. Doesn't he hope to be retained in office by giving testimony favorable to the United States?

A. He says he don't expect anything, because he comes here under orders of the Captain-General of Porto Rico and when he returns he intends to ask his pass to go back to Spain to follow his same position. He says that in Porto Rico they do not know anything he has testified in favor of the American Government. That everybody thought he was coming to give testimony in favor of the French. That if they had known there he was coming to testify to the American Government he would not have had permission to come.

Q. Then you left Porto Rico leaving the impression that you were to testify in behalf of the French Government, or the French ship?

A. Not in favor; to simply prove what happened. Not in favor of anybody, but to tell the truth.

Q. Didn't you receive a letter saying that the relations between France and Spain were friendly and that you should aid France in what you could?

A. Not by letter, but by word of mouth of the Governor-General of Porto Rico.

Q. What made you change in your sentiments?

A. He says he has not changed in anything at all. If his
303 testimony should be against the Americans, he would have stated the same as he said.

Q. Did you communicate with the French consul when you arrived here?

A. Nobody; no.

Q. Were you not instructed to communicate with the French consul when you arrived here?

A. With the French consul of Porto Rico when he left there; he asked him to whom he should communicate here, and he said the French consul in New York.

Q. Why didn't he do so?

A. He didn't know anybody here and did not ask anybody what he should do or should not do, but he is not in a hotel here because he has not the money and is aboard ship and can not speak English and can not help himself. He wants to return to his country again, where his family is.

Q. Have you got any money?

A. About $10 or $12, which he brought from Porto Rico.

Q. How do you expect to get home?

A. The same party who brought him will take him home.

Q. Who is the party who brought you?

A. On board the "Mayflower."

Q. Did anybody on board the "Mayflower" tell you not to go to the French consul?

A. He says on board the "Mayflower" nobody has spoken to him about it.

Q. Did you make any inquiry as to where the French consul was on board the "Mayflower?"

A. No.

Q. Why didn't you ask on board the "Mayflower?"

A. As he was already on board here he did not need anything.

Q. But didn't you have specific instructions to report to the French consul at New York?

A. He says he had no instructions at all.

304 Q. You testified a moment ago that you were requested by the French consul in Porto Rico to communicate with the French consul here on your arrival?

A. If he wanted anything; that in case he needed anything, but in case he did not need anything up to now he did not need to go to the French consul.

Q. When you met this gentleman, Mr. Todd, on board the steamer, did you tell him that you had been requested to go to the French consul?

A. He says he don't remember what we spoke.

Q. Did you show these letters to anyone before you showed them here to-day?

A. He showed them to these two gentlemen.

Q. (By Mr. BRYAN.) Name them?

A. Mr. Bryan and Mr. Hagood. He don't know how to pronounce their names, but he showed them to them.

Q. (By Mr. GOVIN.) When you left Porto Rico did you have any intention of going to see the French consul on your arrival here?

A. He says that when he left Porto Rico they told him he would not need to go anywhere; he would stay on the "Mayflower."

Q. Who told him that?

A. The captain of the "Mayflower" told him that.

Q. He has testified before that he has not spoken a single word to the captain of the "Mayflower." Now he says the captain of the "Mayflower" told him that on arrival at New York he would be able to remain on board. Ask him to explain that discrepancy.

A. He says that he has not to speak about his case. One thing means speaking about the case and the other is asking where I am going now, and received the answer to stay on board.

305 Q. Didn't he know where he was to go, having the instructions of the consul to go to the French consul in New York?

A. He says that he should lose time going and coming and he would not know where to go.

Q. Then the only reason he volunteers for not carrying out the instructions he received is that he would lose time?

A. Talking frankly, he did not need to look for the French consul.

Q. Why did he leave the impression at Porto Rico that he was not going to testify for the American Government?

A. He says he did not leave any impression at all by himself. He just answered when they asked him what are you going to do in New York; he did not say anything, because he knows what would have happened to him down there.

Q. What would have happened to him?

A. In the first place they would not have let him come, and, second, they would have put him in prison.

Q. (By the COURT.) Did I understand the witness to say that there was no official record kept or no copies kept of these messages from the Morro to the Governor-General?

A. They do not keep any record, only what goes in the telegraph.

The COURT. What is this paper that I understood was offered? Did not that purport to be a copy of the messages sent from Morro, the paper which you have there?

Mr. GOVIN. Yes; that purported to be a copy of a book kept at the Morro.

The INTERPRETER. He says that the Government office call
306 upon the semaphore office and state to the semaphore men the Governor-General says observe to the east or to the west. The Governor-General telegraphs to the semaphore office saying to the telegraph officer, tell the semaphore officer to look out at the east, because I have received a telegraph message from Farijado, which is at the east, saying that some vessels are coming in this direction.

Mr. LATHROP. The court desires to find out whether there was any copy of these messages that passed between the offices and kept by him; whether, when he wrote a message, it was made out in writing and a duplicate kept.

The COURT. What I want to know is whether there is in existence now any copy or the original of the messages communicated from that semaphore station to the Captain-General.

The INTERPRETER. He says there is no record.

Mr. JONES. In submitting these to the judge we do not want it understood that we consent that counsel on the other side should examine it, although we have no objection to the court seeing it [referring to paper].

Mr. BRYAN. Then it better not be submitted to the judge.

Mr. JONES. If the judge takes it it is with the understanding that it is not to be submitted to counsel. These are our private papers at the moment.

The COURT. I understood counsel to read from this paper which was handed to him by the witness that there was something there which purported to be copies of the messages sent from the semaphore station to the Captain-General.

307 Mr. GOVIN. So the witness testified and I handed it back to him.

The COURT. Now, I want to know where the original of which that purports to be a copy is kept, or whether there was any record.

Mr. GOVIN. He has testified that there was a record kept and made up every evening of the occurrences during the day, and that he had made a rough copy of that book and had it there. It is a record of what took place in the office.

Mr. HAGOOD. Like the log of a ship?

Mr. GOVIN. Something like that, and this particular record is what he transmitted to the Captain-General, either from what he saw or was told by the semaphore officers.

The COURT. I understood him to say in reply to my question that there was no such copy kept.

Mr. LATHROP. There was a misunderstanding, because he afterwards says yes. He was asked if there was a record kept and he said no, evidently not understanding what it was.

Mr. BRYAN. I understood him that of telegraphic messages sent there was no record of those kept. He simply telegraphed on his instrument and there was no record of the telegraphic message, but there was a record kept at the end of the day of the occurrences.

Q. (By the COURT.) How could he get what purports to be a copy of those messages? Did he get it from the original book or from the original message itself, or did he, simply from his memory, write down what he thought was sent?

A. Those copies are taken from sheets of paper which are kept by the telegraphic station, which are daily reports, which daily reports,
308 when the duty is over for the day, are sent to the district office to which that station belongs. After that those district offices send it to the central office, and from there they are destroyed or thrown away. They do not keep them. They burn them every week or month. Those are sent by the 72 offices in all the island, and every apparatus has one.

Q. (By Mr. LATHROP.) How long after these messages were sent did he make the copy?

A. He says he took them from the telegraph central office in San Juan after that occurrence. It was just by chance he found it. On account of the war things were not in order there and he happened to find it. He says that the rule is to send those daily reports directly and destroy them every month.

Mr. BRYAN. If your honor please, we wish the detail of this letter exhibited heretofore by counsel to be of record; this letter in English

from the French consul showing the way in which the witness left San Juan. It reads as follows:

"CONSULAT DE FRANCE AT PORTO RICO.

"The bearer is Mr. Sergio Noa Lara, in charge of the telegraphic station of Morro Castle in San Juan. The honorable judge at Charleston having expressed a desire to have Mr. Lara as a witness before the court in the case of the capture of the French steamer "Olinde Rodriguez," his excellency the Secretary of State at Washington has requested me, through the medium of M. Cambon, etc., to send the said M. Lara to New York. I do consequently request the American authorities to let him go freely and do help him to fulfill his mission.

"The French Consul, CHARPENTIER.

"San Juan, Porto Rico, September the 24th, 1898.

"(Consular seal.)"

Mr. Lathrop stated that he had but one other witness, whose examination could not be completed within the hours the court would desire to sit, and he therefore asks an adjournment until tomorrow morn-
309 ing. The examination was thereupon adjourned to 11 a. m., October 19th, 1898, at the same place.

310 United States district court, district of South Carolina.

THE UNITED STATES *vs.* THE "OLINDE RODRIGUEZ" } Before Hon. William H. Brawley, district judge.

BAR ASSOCIATION,
New York, October 19th, 1898.

Met pursuant to adjournment.

Present: The court, and counsel as on yesterday.

WILLIAM R. A. ROONEY, a witness called on behalf of the Government, being duly sworn, testified as follows:

Examined by Mr. BRYAN:

Mr. GOVIN: If your honor please, I make the same objection to this testimony as to that of the other witnesses.

The COURT: Yes; it will be noted.

Q. (By Mr. BRYAN.) Lieutenant, what is your name?

A. William R. A. Rooney.

Q. Are you in the service of the United States in the Navy?

A. Yes, sir, I am a lieutenant in the Navy, serving on board the "New Orleans," and at present attached to her.

Q. How long have you been in the Navy?

A. Since 1870; 28 years.

311 Q. What is your age?

A. 45.

Q. You have been 28 years in the service?

A. 28 years in the service.

Q. On what vessels of the United States have you served in the Navy?

A. Prior to joining the "New Orleans" I served on board the "Oregon," on the Pacific station, pretty nearly a year, and prior to that

on board the "Monterey," the monitor, on the Pacific coast, and before that on board the cruiser "Atlanta," on the North Atlantic coast. Those were the three ships during my last cruise. I have also served on board the "Swatara," the "Wachusett," the "Hartford," the "Colorado," "Worcester," and others. My last cruise was on board the "Oregon," "Monterey," and "Atlanta."

Q. When did you become attached to the cruiser "New Orleans?"

A. April 17th, I think, of this year, 1898, at New York.

Q. You are a graduate of the Naval Academy?

A. Yes, sir.

Q. What position did you occupy on board the cruiser "New Orleans?"

A. The navigating officer.

Q. What was the armament of the cruiser "New Orleans?"

A. She had six 6-inch breech-loading rifles, and four $4\frac{7}{10}$-inch breech-loading rifles, and ten 6-pounders, and four 1 inch and a half, which would correspond to 3-pounders, four 3-pounders in the tops, and also four 37-millimeter automatic guns corresponding to 1-pounders.

Q. When did the cruiser "New Orleans" go on the blockading station off San Juan, Porto Rico?

A. On the 14th of July, as I recall.

Q. During all this time on that blockade you were navigat-
312 ing officer?

A. Yes, sir.

Q. Coming now to the morning of the 17th of July, when did your watch commence?

A. It was the—I was called on the blockade at 4 o'clock in the morning, and got on the bridge generally about 4.15 or 4.20, and usually remained on the bridge the night previous until 10 o'clock; but I was invariably called at 4 o'clock in the morning on the blockade.

Q. Now, will you state what the position of the "New Orleans" was that morning, and her movements?

A. We were, when I came on deck, slightly to the westward of north, about between 11 and 12 miles from the Morro, I should say, lying still, with our ship's head towards the Morro—in the general direction of the Morro, under no speed. The land was obscured at that time, of course. It was not daylight, and it was not possible to determine the ship's position by bearings at that time.

Q. What were her subsequent movements?

A. Her subsequent movements were—the captain sent word to head the ship east and to let him know when the Morro bore south. The ship was turned with the starboard helm and headed to the east.

Q. At what time?

A. At 4.50, as I recall it; and the patent log was put over and read and reported by the quartermaster, reading 6^2, as I recall it. Then we ran until 5.15, 2.7 knots by patent log, when the Morro, which was then visible, bore south. This was reported to the captain, and we continued on our course. He sent word to continue east until the Morro bore southwest, which we did. The patent log was then read at 6.50, show-
ing a difference of reading between the south bearing and the
313 southwest bearing of 10.6 knots by the patent log. Both bearings were taken on the Morro. Then the ship was headed, by the

captain's order, south by compass—bore south, a quarter west magnetic—with orders to run three miles, which was done. The patent log was read at the end of that time, and the engines were stopped and the ship headed out about north-northeast.

Q. At what hour was that?

A. That was at 7.20.

Q. How was Morro bearing at that time?

A. Morro was bearing then—there was no bearing taken on the Morro at that time; but from the run plotted on the shore three miles south, a quarter west magnetic, it would be about southwest—three-quarters west.

Q. And at that point the ship stopped, you say?

A. At that point the ship stopped; yes, sir.

Q. At what hour was that?

A. At 7.20.

Q. When did you leave the bridge?

A. About 7.30, by the captain's permission. He telephoned me through the speaking tube that I might leave the bridge and go below.

Q. When did you come again on the bridge?

A. Between 8.40 and 8.45, as near as I recall.

Q. During the time that you had left the bridge, 7.30, up to the time that you returned to the bridge at 8.45, as you say, had the ship been in motion?

A. Yes, sir; I could tell by the engines turning over that she had been in motion.

Q. When you reached the bridge at 8.45, were any bearings taken of the ship at that time or ther'after by yourself?

A. Bearings taken very shortly afterwards, by direction of the
314 captain, who told me to take a careful bearing and plot the ship's position as carefully as I could.

Q. At what time did you take those bearings?

A. At 9 o'clock.

Q. Was the ship then still?

A. The ship was then still.

Q. When you came on deck?

A. Yes, sir; she was still on the water.

Q. And remained still until the time you took the bearings?

A. No; she turned. The captain, when I first came on deck between 8.40 and 8.45, I don't remember exactly to the minute or two, we were lying still with our head a little to the northward and parallel to the land, I should say west by north, and the "Olinde Rodriguez" was on our port bow about two points, and I should say a quarter of a mile away, heading practically a course opposite to our own, which would be I should say about east by south; and at that time I tried to get a bearing, not by order of the captain. He hadn't given me the order that time, but the captain put his helm to port and turned her slightly with the port engines to head out and northward and eastward toward where there was, or at least heading in the direction of, a Norwegian bark that had been sighted early in the morning. The engine was only turned over to give her headway to bring her around. Then as soon as her head was steady on the compass course, which turned out to be northeast by north, I took the bearings on the Morro and Vacia Talegas Point.

Q. Did you make a memorandum of those bearings?
A. Yes, sir.
Q. Did you make them at the time?
A. Yes, sir.
Q. Have you that original memorandum book of bearings so taken?
A. Yes, sir.
315 Q. What were those bearings?
A. The Morro bore southwest, one-eighth south, and Vacia Talegas Point bore southeast, one-eighth east by compass, the ship's head northeast by north by compass. The magnetic bearings, applying the deviation on the ship's head northeast by north, which was $\frac{1}{8}$ point westerly, would make the magnetic bearing of the Morro at that time southwest $\frac{1}{4}$ south, and of Vacia Talegas Point southeast $\frac{1}{4}$ east.
Q. I wish you would produce a chart of the water off San Juan.
A. Yes, sir. [Chart produced.]
Q. (The last answer of the witness was read by the stenographer to the witness with the chart before him.)
A. Yes.
Q. Lieutenant, I would request that you show the court on the chart at first the lines from that point and Vacia Talegas Point to Morro, and mark on the chart the intersection of those bearings—that is, the position of the "New Orleans" and the "Rodriguez" when the two vessels came together.
A. This is off the port of San Juan. This is Vacia Talegas Point to the eastward (marked "A") and this is the Morro (marked "B"). This represents the 9 o'clock position of the "New Orleans," heading northeast by east by compass (marked "C"). That defines the position of the "New Orleans" at 9 o'clock. The cross bearings of the Morro were on the Vacia Talegas Point.
Q. Will you now by your dividers state the distance between the point "C," the position of the "New Orleans" at 9 o'clock, and Morro?
A. There is the distance, $7\frac{3}{3}$—it is over $7\frac{1}{2}$ miles. Practically $7\frac{3}{3}$ miles.
Q. In what direction from the "New Orleans" was the Morro bearing at that time when these two ships were together?
316 A. Southwest a quarter south magnetic.
Q. Is there any doubt about the certainty of those observations?
A. There is none in my mind.
Q. Have you used those points previously?
A. Yes, sir.
Q. Had you used Vacia Talegas Point and the Morro Point for your previous observations?
A. Yes, sir.
Q. Had you used them subsequently for your observations?
A. Yes, sir.
Q. Did you use any other point than Vacia Talegas to the eastward for your observations off that blockade?
A. No, sir.
Q. What point did you use to the westward of San Juan?
A. We used Point Salinas, which lies to the eastward, or rather an island which lies a little to the westward of Point Salinas; defines it

better; and also a wreck which lies to the westward about 6 miles west of—lying about half a mile off the beach or shore line.

Q. Independent of this observation, do you know whether at that time and place the point Vacia Talegas is known and referred to in navigation, and especially in the sailing directions of the United States, as a prominent point for navigators?

A. It is, yes, sir; it is one of the best-defined points, as far as I can gather, along the coast.

Q. Now, Lieutenant, will you draw a north and south line through Morro on that chart?

A. Yes, sir. [Line drawn.]

Q. Now, with your dividers, will you measure the distance from the point "C," the position of the "New Orleans" with the "Olinde Rodriguez" at 9 o'clock? Measure the distance to the north and
317 south line running through Morro, going westerly. Will you mark the intersection of the line going westerly, the intersection with the north and south line with the letter "D?"

A. Yes, sir. (Witness marks it "D.")

Q. Now, what is the distance from the point "C" to the point "D?"

A. Slightly over five miles; a fraction over five miles.

Q. How much is it, as near as you can get it?

A. $5\frac{1}{8}$; less than that; $5\frac{1}{16}$ miles.

Q. Now will you measure the distance from the point "D" down to Morro?

A. Five and a little less than three-quarters of a mile; five and two-thirds we will say.

Q. Lieutenant, will you on that chart trace a course from St. Thomas south 69 east?

A. How is that; magnetic?

Q. Yes.

A. From what?

Q. A course on the chart south 69 east from St. Thomas.

A. Directly from the port of St. Thomas?

Q. Yes.

A. You can not approach the port directly.

Q. Well, according to the most direct route.

A. To the west end of the island?

Q. The usual route; direct usual route to St. Thomas on a course south 69 eas ?

A. (Witness traces the course as requested.) I have drawn this laying a course towards Turkey Key.

Q. Now will you just indicate at the northwest end of that course the letter "M?"

(Witness so marks it.)

Q. Now will you put down here [indicating] "M. O.?"

(Witness so marks.)

318 Q. Now the course "M. O." to St. Thomas, south 69 east, passes between what islands?

A. It is directed for Turkey Cay or Turkey Key, lying in between the Savannah Island and the west coast of St. Thomas. That is sometimes used by steamers in going there.

Q. That is one passage?

A. That is one passage.

Q. Now, will you measure on the chart the distance from San Juan to that course to the north of San Juan?

A. 14¼ miles.

Q. Will you mark the intersection of the north line from San Juan and the course with the letter "P?"

A. Clear of that point?

Q. Yes.

(The witness so marks it.)

Q. The distance from Morro to the point "P" is 14¼ miles?

A. 14¼ miles; yes, sir.

Q. And a vessel on that course, south 69 east, bound direct for St. Thomas passing between the Savannah Island, is that?

A. The course is laid for Turkey Key, just to pass clear a little less than a mile of Savannah Island.

Q. That would bring the vessel 14¼ miles off San Juan?

A. Yes, sir; north of San Juan.

Q. Now, Lieutenant, will you on the same chart lay a course passing to the south of Savannah Island; the usual course passing to the south of Savannah Island through the Virgin Passage, south 69 east, to St. Thomas?

A. This is steering for the passage, and it must be understood there is a certain amount of leeway or margin allowed. Now it depends. Of course the obstructions you have to keep clear of in steering for the Virgin Passage here would be the keys lying off to the northward
319 and eastward of Culebrata. I think steering for the southern end of Savannah Island would be what I should do.

Q. Now, you have drawn a course south 69 east, steering for the southern end of Savannah Island?

A. To the southern end of Savannah Island gives you a northing or clearance over two miles of these keys that lie off to the northeastward.

Q. Will you indicate that course by the letter "R" at this end and at the other end "R W."?

A. Yes, sir.

(Witness so marks it.)

Q. The course that you have marked on the map, "R W," is a course south 69 east to the southern end of Savannah Island through the Virgin Passage?

A. Yes, sir.

Q. Is that a direct course to St. Thomas?

A. Yes, sir; I should call it direct course to St. Thomas.

Q. Will you measure on the chart the distance from Morro to the point of intersection of this course and the line drawn north and south through Morro?

A. 12¾ miles.

Q. Will you indicate the point of intersection by the letter "S"?

A. Yes, sir.

(Witness so indicates.)

Mr. BRYAN. I would be glad if your honor would mark that chart in evidence, putting your signature to it.

(The court marked the chart, "Chart offered in evidence October 19th, 1898, in Lieutenant Rooney's testimony.—W. H. B.)

Q. Lieutenant, have you a copy of the log of the "New Orleans" for the 17th of July, 1898?

A. Yes, sir.

Q. I would be glad if you will produce it.

A. Yes.

320 (Log produced by witness.)

Mr. BRYAN. Your honor, this is the copy of the log of the "New Orleans," which bears the verification of Captain Folger and Lieutenant Rooney, the navigator.

Mr. GOVIN. Is that a copy of the log?

Mr. BRYAN. Yes.

Mr. GOVIN. I object to it. We don't want the log copied.

Mr. BRYAN. Your honor knows that we can not get the log of the ship.

Mr. GOVIN. Certainly you can get the logs in existence. You haven't shown it has been destroyed. We can not accept a copy of a paper, no matter who signs it or certifies it. We want the original paper.

Mr. BRYAN. I do not know that the Navy Department will let that record go. That is a verified copy. We will have it here and let the the court take a copy and send it back, under certain circumstances. I understood that the counsel inquired for the log below.

Mr. GOVIN. Yes; for the log. We did not inquire for a copy of the log.

The COURT. I see by the newspapers that the "New Orleans" has left San Juan and is on her way to New York. You might take that copy and compare it with the original.

Mr. GOVIN. I doubt whether the log is on the "New Orleans." I assume it has been forwarded to the Navy Department. I do not know when they forward them. The lieutenant can tell.

The WITNESS. It is still on board.

321 The COURT. I do not know that it belongs to the class of papers of which a certified copy can be received.

Mr. BRYAN. I have understood my friend heretofore wished the log.

Mr. GOVIN. We do want the log.

Mr. BRYAN. Now I understand them to say they will not accept any certification of the log but require the production of the original log.

Mr. GOVIN. Yes, sir.

Mr. BRYAN. We trust, then, your honor will give us an opportunity to put that log in as a matter simply of record.

The COURT. Yes.

Mr. GOVIN. Now, if your honor please, I desire to know what that opportunity means. Does it mean a month, or day, or what?

Mr. BRYAN. It is simply a question of the Government. May presumption is that the district attorney will move immediately and that the Department will move immediately in a matter of this kind. We had supposed that this verified log by the navigator and the captain would be accepted in lieu thereof.

Mr. GOVIN. The ship is kept in custody. We made a request for the log. It is not our fault that the counsel does not bring proper evidence.

It is no excuse now to say they will get the log, or they thought a certified copy would do. It is perfectly plain that the only legal and competent evidence would be the log itself, and that ought to be here, or evidence to warrant the introduction of this; its destruction or loss.

322 The COURT. To what is your motion directed?

Mr. LATHROP. We are not making any motion.

The COURT. Proceed with the examination of this witness, then, and we will take it up when it comes.

Q. (By Mr. BRYAN.) Lieutenant, during the time you were off the blockade of San Juan, did you have occasion to observe the direction of the current in the immediate vicinity of the port?

A. Yes, sir.

Q. What was the drift of that current?

A. From the observations that were made coming on the coast on July 14th, our custom—Captain Folger's custom—and habit was to remain within between 6 and 7 miles from the Morro, and the coast line was studied; we would pass to the westward and eastward and the first thing we did in coming on the coast was to study the coast line carefully as to the salient points, with a view to keeping the ship's position and studying out the coast line as well, and while doing this I observed that we had a drift, a slight drift, to the eastward. The observations were not made on an extended order, but were simply from time to time in taking bearings to keep our distance from the Morro, and the result of my observation was that the general drift was to the eastward at that distance from the coast where our observations were taken.

Q. Have you any other method of observation other than the drift by bearings as indicated by change of position; your bearings on the shore?

A. The only other that I recall was the drift of targets, casks we threw overboard as targets for small-arm target practice, and I noticed that they also drifted to the eastward. Even when we were comparatively still, with a fresh trade blowing—at least on one occasion

323 the trades were blowing I should say with the force of 5 to 6—that while we were not apparently drifting, yet the casks that were thrown overboard for target practice were drifting to the eastward, to windward, and that was becoming very noticeable to anyone.

Q. How would that current vary? Would it vary with the force of the trades?

A. Judging from the observation from the ship, I should say it would vary with the force of the trade. It would be checked by a strong trade—that is, the easterly drift would be checked by a strong trade.

Q. How was the weather and wind on the morning of the 17th?

A. It was a clear morning, with a gentle breeze, an easterly breeze.

Q. What was the condition of the atmosphere on that morning?

A. It was as it always was in the early morning. Over the land it was hazy in the early morning; but after the sun rose, and a little before the sun rose, the shore line came out very distinctly. The Morro, the object nearest to us, always, or Salinas Point, the point we always had our eyes on, was generally the first to be discovered. That came very clearly before other points did, and the shore line at 5.15, or between 5.15 and 6.50—well, say 6 o'clock—was well defined. The higher hills, the mountains behind in the interior, were still covered by the haze, and that very often lasted all day long—the haze on the upper hills.

Q. That is, there was a lifting of this haze?
A. Lifting; yes.

Cross-examination by Mr. GOVIN:

324 Q. Lieutenant, I understand you to say that the course south 69 east is a course from Puerto Plata to St. Thomas as marked on the chart?
A. I have not made that statement.
Q. Then what is that course?
A. That is a course in the neighborhood of San Juan.
Q. From where?
A. It is immaterial where.
Q. That does not answer my question.
A. I mean to say, I was asked to lay out a course off San Juan south 69 east for St. Thomas. Now, I have laid off the course there to pass through the passage between the Savannah Island and St. Thomas, or through the Virgin Passage. That is to say, I have laid off a course steering for Turkey Key, on the west coast of St. Thomas, and also for one steering for the southerly end of Savannah Island, which you might take, either course.
Q. And if you were asked to lay out a course from Puerto Plata, the course you have laid out now would not necessarily be the correct one?
A. It would not necessarily be a correct one; no, sir.
Q. Now, here is a chart in which Puerto Plata and San Juan are both indicated, and will you kindly lay out a course that you, as navigator, would take, starting from Puerto Plata to go to St. Thomas?
A. I do not see St. Thomas here, and I can not lay it out. St. Thomas is not there.
Q. Now, give me the course as a navigator. If you had a vessel at Puerto Plata and wanted to go to St. Thomas, tell me just what you would do—what points of land you would see, what lights you would make to verify your course; in fact, just everything, as a navigator, you would do to arrive at St. Thomas?

325 Mr. JONES. Perhaps by comparing this chart with that you can fix the location of St. Thomas and draw it on this one [producing another chart].

Mr. BRYAN. Counsel objects to a course drawn upon a chart on which St. Thomas does not appear. The witness has already stated that St. Thomas does not appear on this chart.

The COURT. If the witness can locate it, that will be sufficient.

Mr. BRYAN. He has already stated he could not.

Mr. JONES. He has not stated that. He said it was not there. He can do it by an extension easily.

Q. (By Mr. GOVIN.) Take the Culebra Passage, which is indicated here, isn't it?
A. Culebra lies to the eastward. The Virgin Passage is the proper name.
Q. Here is the Virgin Passage, isn't it [indicating]?
A. Yes, sir.
Q. Then that is on this chart?
A. Yes, sir.
Q. (By the COURT.) Is the Virgin and Culebra Passage the same?

A. Yes, sir; the Virgin Passage is the proper name for it.

Q. (By Mr. GOVIN.) You would have to go, taking the Virgin Passage to go to St. Thomas, through the Virgin Passage?

A. Yes, sir.

Q. Then you can show it?

A. You can give this a clearance [indicating].

Q. I will modify the question to a course to the Culebra Passage, simply to obviate any question. The question is, a course through the Culebra Passage, instead of to St. Thomas.

326 A. I lay off a course that I should consider the proper one to steer from Puerto Plata.

Q. Tell us just what you would do, starting from Puerto Plata—what lights you would strike, and just how you would navigate the ship.

A. There is no compass on this chart. I have given a clearance here. Our habit has been to pass not less than five miles from Cape Viejo Frances. That is our practice.

Q. You can lay that course on this map, then?

A. Yes, sir.

(Witness traces the course on the chart.)

Q. I am not asking you to lay out a course to any particular point that I mention, but to lay out a course as you would navigate the ship. You are taking the ship from Puerto Plata to Culebra Passage. I am not asking you to mark a straight course, or any course, but I am asking you simply to mark a course.

A. The only course I could mark, then, would be the course I would take.

Q. Exactly; that is what I desire.

A. (Witness traces the course.) Those are the courses I should steer.

Q. Kindly make a statement of those courses. Later on we will identify them.

A. I have laid off a course five miles from Cape Viejo Frances. I would steer from Puerto Plata north 59 degrees east, magnetic.

Q. How far?

A. Until the Macoris Point bore abeam. Then I would steer south 71 degrees east, giving Cape Viejo Frances a clearance of five miles, and also Culebrata light a clearance of five miles. In passing you would make Cape Viejo Frances in the daytime—that is, you would be able to see Cape Cabron and Cape Samana. In the nighttime you would

327 pick up the light-house of Aberjerceda, if it were going—Arecibe light.

Q. Those are on the island of Porto Rico?

A. Yes, sir; Port San Juan light, Cape San Juan light, Culebrata Island light. That would lead you five miles; I would steer that, south 71 east, until Culebrata Island light bore abeam; then through the Virgin Passage for the Sail Rock; then to St. Thomas.

Q. Have you ever sailed this course?

A. We have; yes, sir.

Q. From Puerto Plata to St. Thomas?

A. Not from Puerto Plata, but coming around from Santiago.

Q. Do you know the depth of water near the old Cape Frances?

A. No, sir; I do not. My impression is, there is plenty of water there.

Q. You could go nearer than five miles?
A. Yes, sir.
Q. You simply fix it as five miles as in your opinion you would go?
A. Yes, sir.
Q. But you could go nearer?
A. Yes, sir.
Q. No reason why you should not?
A. No, sir.
Q. Following your course of south 71 east, is that a true course?
A. No; magnetic course.
Q. How far would you be from San Juan, or at what distance would you pass from San Juan?
A. This, of course, is a rather large scale, and I can't say exactly; but 12 miles I should say.
Q. About 12 miles from San Juan?
A. Yes, sir.
Q. After sighting the old French Cape, if you laid a course south 69 east, would it not be just as possible to reach the Virgin Pass?
328 You can scale it if you wish. I add to the question, taking it about 2½ miles from the old French Cape.
A. That would steer you in on the land at Cape San Juan.
Q. I correct the question by using the course to Cape San Juan. I made a mistake in saying to Culebra Passage. To see the light of Cape San Juan?
A. It will steer you, if you pass Cape Viejo Frances 2½ miles and steer south 69 east, it would run you into the land; it would not give you any clearance there. In other words, you would be heading directly—I won't say directly—but at least you would run into the land, if you kept on that course independent of anything else, a little to the eastward of Port San Juan. You would probably pass Port San Juan a mile on that course.
Q. That is to say, if you took a south 69 east course from about 2½ miles north from the old French Cape, you would pass about a mile from San Juan?
A. About a mile from Port San Juan—not Cape San Juan.
Q. How far would that pass?
A. This is referred to as Cape San Juan on this chart.
Q. (By the COURT). Cape San Juan and Port San Juan are different points?
A. Cape San Juan is the light.
Mr. GOVIN. I should like the log which is in evidence of the French ship. The differences in the names are very slight, but in formulating these questions I have gotten some of the points mixed. Now, the log shows the course we followed, and I want to have the lieutenant verify the course, and the log will show it.
The COURT. Have you the log of the "Olinde Rodriguez" in court?
329 Mr. HAGOOD. Not in court, but I can get it.
Mr. GOVIN. Perhaps we can make it out from this.
Mr. JONES. Are the records of this case in the hands of the district attorney?

The COURT. No; they are in the hands of the clerk, but I directed the clerk to turn them over to Mr. Hagood to bring up here, thinking that they might be needed, as bringing the clerk up here would impose considerable expense, and it seemed unnecessary.

Mr. JONES. I think those papers ought to be deposited with the clerk of the district court here.

The COURT. If I had any suspicion that Mr. Hagood would spoliate the record I would require that to be done, but there is no ground for such a suspicion.

Mr. JONES. I have no such suspicion, certainly, but as this case is a closely contested one, indeed a great deal of zeal is shown not only on the part of counsel but of these naval officers, I would like to exercise my ordinary right of having the custody of important papers put in the hands of the proper officers, and I would like now for your honor to direct that these papers be put in the hands of the deputy clerk of the district court of this district. I will say, furthermore, that there are some other occurrences in the case that will be developed hereafter that will make the propriety of the application perfectly apparent to your honor.

Mr. HAGOOD. I would like to explain my connection with the papers.

Mr. JONES. There is no explanation about it. Counsel seem to be sensitive, but I am not reflecting on counsel.

330 The COURT. If counsel desire—and they have that right—to have access to these papers they will be deposited here. I will make any person in this building—the librarian of this association if he will undertake it—custodian to take care of them. I will not send them to the court down below because it will be inconvenient, but they will be brought and delivered to me and I will take care of them.

Mr. HAGOOD. I have all the papers here in court that I supposed would be required.

The COURT. You will turn all the papers in the case, that you have, over to me.

Q. (By Mr. GOVIN.) Lieutenant, did you see the "Olinde Rodriguez" at any time on the morning that she was captured?

A. Yes, sir.

Q. What was the first time that you saw her?

A. When I came on the bridge between 8.40 and 8.45.

Q. Had the "New Orleans" then fired a shot?

A. She had; yes.

Q. Then before that you did not know the position of the "Olinde Rodriguez?"

A. Before between 8.40 and 8.45?

Q. Yes, sir; before that?

A. No, sir.

Q. Do you know what courses were made by the "New Orleans" before 8.40?

A. I only know from the record in the log book as put down by the officer of the deck.

Q. But of your own knowledge?

A. Of my own knowledge I do not know.

Q. When you saw the "Olinde-Rodriguez" at 8.40, what time did you have on board?

A. We had the local mean time of San Juan.

331 Q. You had taken that?

A. Yes, sir.

Q. From your chronometer?

A. Yes, sir.

Q. When was the last observation you had taken on board?

A. In what?

Q. Observation to locate your position.

A. The last observation was taken at 7.20, but not by bearings. The last bearing observation was taken at 6.50.

Q. How did you take that?

A. By a beam and quarter bearing, as it is called.

Q. And the patent log?

A. Yes, sir.

Q. Where did that place the "New Orleans?"

A. That placed the "New Orleans" at 6.50 at 15 miles from the Morro, the Morro bearing southwest, magnetic.

Q. The Morro bearing?

A. Southwest. That was at 6.50, as I recall it.

Q. Did you take that?

A. I took that; yes, sir.

Q. Then what did the "New Orleans" do?

A. She was headed south after that by direction of the captain, after 6.50, and ran three miles.

Q. Do you know of your own knowledge that she ran three miles?

A. I know of my own knowledge that she ran 3 miles.

Q. That placed her about 12 miles from Morro?

A. 13 miles.

Q. The Morro bearing how?

A. Southwest ¾ west.

Q. What speed did you run at?

A. Half speed, as I recall it.

Q. Then what did the "New Orleans" do?

A. Then she stopped her engines and headed offshore.

Q. Headed offshore northwardly?

A. Northwardly; yes.

Q. You don't know how far she ran north?

332 A. She didn't run north at all. She simply stood in her position after running three miles, stopped the engines, and turned her head offshore.

Q. Do you know whether she drifted?

A. She may have done so.

Q. You say the weather was clear?

A. The weather was clear.

Q. Was there any haze over the land?

A. Over the high land there was. At this time in the morning there was a haze over the high land, but the coast line was clear.

Q. What is the speed of the "New Orleans"?

A. She is reputed to be able to go 20 knots. I have never seen her go that speed, however.

Q. Was it at that time you left the bridge?

A. At 7.30 I left the bridge.

Q. That was when the "New Orleans" had her engines stopped?
A. Engines stopped about 13 miles north and east of Morro, the Morro bearing about southwest ¾ west. No bearing was taken but that was from the run and laying it on the chart. That would be the bearing after running three miles south by compass from the 6.50 position.
Q. What do you mean by half speed?
A. Half speed, I should say, was 7 knots.
Q. Less than half?
A. Less than half.
Q. Isn't it usual to call half speed more than half?
A. No; not that I am aware of.
Q. You then left the bridge and had not seen the "Olinde Rodriguez"?
A. Yes, sir.
Q. Do you remember of any report that the "Olinde Rodriguez" had been sighted?
A. No, sir; I do not.
333 Q. Was there any report of a sailing vessel having been sighted?
A. I was aware of that vessel because the vessel was sighted in the early morning after we had stopped our engines and headed to the north northeast.
Q. How did that sailing vessel bear?
A. Right ahead when first sighted.
Q. Then up to the time you left the bridge, which was 7.20?
A. About 7.30.
Q. The "Olinde Rodriguez" had not been sighted.
A. Had not been sighted.
Q. And you were about 13 miles from the land?
A. Yes, sir; not from the land, from the Morro?
Q. You then came again on the bridge at 8.40?
A. Between 8.40 and 8.45.
Q. Between 7.30 and 8.40 you did not know what occurred?
A. I do not know what occurred; no, sir.
Q. The ships came together, and when I say together I mean they approached within some distance and stopped. What was the time approximately?
A. As I say, when I took the bearings it was 9 o'clock.
Q. But the ships came together before that?
A. When I came on deck between 8.40 and 8.45 the "New Orleans" was lying with her head to westward, slightly to northward of west, I should say, and the "Rodriguez" was on our port bow about 2 points, and she was a quarter of a mile away, I should say, and heading probably, as near as I could make out, a course opposite to ours.
Q. Then it was half an hour after that time that you took the bearings from 8.30 to 9?
A. I didn't say 8.30.
Q. What time did you say?
A. Between 8.40 and 8.45.
334 Q. It was 15 minutes after?
A. I started to take the bearings at 8.45, but the captain put his helm aport and turned his port engine, giving it a few turns, and turned his head—the ship's head—out in the direction of the sailing

vessel. He wanted to keep her under observation as well; but as soon as the ship's head was steady I—evidently there was very little headway made except to turn the port engine to turn her head out, and they were given a few turns and stopped—and as soon as she was steady on the compass course northeast by north I took the bearings.

Q. Then was there much or little change in the positions of the ships between the time that you took the bearings and the time that they came together and you saw them?

A. Very little—that is, from my observation there was none. When we headed northeast by north it brought the land on our starboard quarter, and I observed at the same time that her quartermaster hauled in her patent log at that time, or somebody on board did it.

Q. Did you remain on deck after that hour, 9 o'clock?

A. Yes, sir.

Q. Did you hear the cannon shot of the "New Orleans"?

A. Yes, sir.

Q. At what time was it?

A. I don't know. I was in my room, in my bath, at the time. I was under the impression that it might be, not having heard anything about this, that the captain had concluded to overhaul the Norwegian bark that had been sighted.

335 Q. Can not you even approximately give us an idea?

A. I can not give any approximation.

Q. The Norwegian bark was off to the east?

A. When first sighted she was right ahead of us. We were heading north-northeast, and she was steering to the westward under sail.

Q. After 9 o'clock what took place on board the "New Orleans" with regard to the "Olinde Rodriguez?"

A. After 9 o'clock, as I recall it, it was simply a question of interchange of signals between the boarding officer and the captain and his report on board.

Q. Do you know what his report was?

A. I do not, except—I do not know in an official way.

Q. How do you know, from conversation with Lieutenant Russell?

A. No. There was no report made to me, simply I was there when Lieutenant Russell made his report and brought his boarding book to the officer on the bridge and reported that he had overhauled the papers. He had the papers there and his remarks in his notebook.

Q. Do you know what those remarks were?

A. I do not.

Q. Did the captain say anything?

A. He was directed by the captain to get his prize crew ready and have them sent to the executive officer to have a list of the prize crew made out and get their things ready to go and Lieutenant Russell to take charge.

Q. Then when the "Olinde Rodriguez" started, under the custody of Lieutenant Russell, had your position changed in any material degree the position of the ships?

336 A. I think not; no, sir. When he did what?

Q. When the "Olinde Rodriguez" started under the custody of Lieutenant Russell.

A. For where?

Q. For Charleston.

A. Yes; I think there was.

Q. What was the change?

A. I don't know; I think it was further away from the land.

Q. Why was it further away from the land; how did the change occur?

A. That I do not know.

Q. Why do you say they were further away?

A. I know it was. I know it was heading out instead of heading in, and to clear each other my impression is that we turned the engines over occasionally. We were practically lying off the same place, but we were heading out, and, as I recall it, we turned the engines over and went further out.

Q. How much further out?

A. That I can't say.

Q. It could not have been much or you would have noticed it?

A. Not very much.

Q. There must have been some motion of both ships?

A. We were shifting. As I say, my impression was, it was simply to clear each other.

Q. But the "Olinde Rodriguez" started from about that position on her voyage to Charleston?

A. That I can not say; I won't say that; that is something I am not definite about. I only know the question of bearing is the thing that would define it to my mind, and as to our position then we were simply drifting about.

Q. But the bearings would define it?

A. The bearings would define it at that time.

337 Q. Now, lieutenant, will you please lay out a course as is read to you? Old French Cape abeam, 2 miles distant. Course south 74 east, true course. Between 1 and 1.52 o'clock p. m. we were opposite Cape Cabron, about 10 miles offshore, and continued the same course. At 10 o'clock p. m. laid our course 2 degrees to port, the weather being cloudy and the light on Cape Boranquet being out. Kept the same course until the 17th of July at midnight, which would be 2 hours, when changed course to south 69 east, having run about 22 miles on the south 76 east course, the current of Mona Channel having carried us offshore, according to our observations by the stars. At 5 o'clock in the morning, after an observation, we came back to south 73 east, in order not to pass San Juan too near, passing San Juan at a distance of about 9 miles at 8 o'clock in the morning.

A. I have done so.

Q. Is there anything in that course that would make it impracticable or impossible for a vessel following that course to reach the Culebra Point with a view of going to St. Thomas afterwards?

A. Which course?

Q. The course you have just laid out.

A. No, sir.

Q. Isn't it possible that every navigator leaving Puerto Plata for St. Thomas, while generally following that course, might change it in some respects and still be considered a correct course to St. Thomas?

A. Yes, sir.

Q. Wouldn't you ordinarily believe that a person who was in the habit of making the course from Puerto Plata to St. Thomas regularly would be a pretty good judge of what the course ought to be?

A. I certainly should, sir.

Q. Assuming that the "New Orleans" was about 13 miles from
338 shore, the Morro bearing southwest ¾ west and that the "Olinde Rodriguez" should be on a course south 73 east, at the distance that you can see at sea, how would the masts of the vessel appear to those on board the "New Orleans?"

A. Of a vessel how far?

Q. As far as you can see.

A. In other words—that is not quite clear to me.

Q. How far can you, ordinarily in clear weather, see the masts of a vessel at sea so as to be able to distinguish them?

A. 12 miles, the masts and the smokestack.

Q. Assuming this vessel to have been 12 miles from the "New Orleans," how would the masts look to those on board the "New Orleans?"

A. It would depend on her course she was steering with the vessel. It would depend on her course.

Q. So it would entirely depend upon the course of the other vessel, which in this case was the "New Orleans," and it would also depend upon the "New Orleans'" exact position?

A. It would depend upon her position as well, and the course. Let me consider that answer a moment. It would depend—I will modify that by saying it would depend on the course of the opposite vessel, independent of the position of the observing ship from any fixed point. It would depend not on the position of the observing ship from any fixed point, but on the course the other vessel was sailing.

Q. Assuming the "New Orleans" was stationary in the position you have indicated she was, and that the "Olinde Rodriguez" was about 12 miles from her on a course south 73 east, true, bearing west by
339 north, how do you think the masts of the "Olinde Rodriguez" would appear to those on board the "New Orleans?"

A. I can illustrate that question. That is 12 miles west by north—that little speck—of the "New Orleans'" position at 7.20 or 7.50. I have laid a course south 73 east, true, through that point, the assumed position of the "Olinde Rodriguez." If this was her course, her masts would be in that line indicated, and would have that appearance from a vessel off here [indicating]. In other words, they would be very slightly open.

Recess was then taken until half past 2 o'clock.

340 WILLIAM R. A. ROONEY.

Cross-examination continued by Mr. GOVIN:

Q. In your examination of the current about Porto Rico, you said that the examination was about 6 miles from shore?

A. From 6 to 8 miles.

Q. That would not necessarily indicate that the current ran in the same direction 12 or 14 miles from shore?

A. No, sir.

Q. What is the tonnage of the "New Orleans?"
A. 3,600 tons displacement.
Q. What is the range of her heaviest gun?
A. The range of a six-inch gun, breech-loading rifle with a Cordite charge is 10,000 metres, which would correspond with 11,000 yards, or 5½ sea miles.
Q. When did the "New Orleans" go to San Juan on blockade duty?
A. On the 14th of July, as I recall it.
Q. What vessels were there before the "New Orleans?"
A. The "Yosemite" was there.
Q. Any other vessels?
A. None other.
Q. Was the "St. Paul" there?
A. She was not at that time.
Q. Had she been there?
A. I am under the impression that she had been; that she was a scouting vessel then, and was there a part of the time.
Q. No other vessel was there while the "New Orleans" was?
A. Not at that time; later there was.
Q. What vessels came?
A. The "Cincinnati" and "Frolic" came later on.
341 Q. When was that?
A. That was a month later—some time in August, I think.
Q. Where did the "New Orleans" come from?
A. She came from Guantanamo, on the southern coast of Cuba.
Q. Was she on blockade duty there?
A. Not at Guantanamo.
Q. Where had she been?
A. She had been blockading off Santiago, and had been with the fleet in the Bahama Channel, on the north coast of Cuba.
Q. Was she alone off Santiago?
A. She was not alone. We were blockading not only the harbor, but the Spanish fleet as well—Admiral Cervera's fleet.
Q. How many vessels were there?
A. The vessels varied; they came and went. I recall the "Massachusetts," the "Indiana," the "Oregon," the "Brooklyn," "Texas," the "Scorpion," the "Vixen," and the "Dolphin," the "Iowa," the "New York," flagship. I think that was all.
Q. (By the COURT.) The "Gloucester?"
A. The "Gloucester" was there, yes. The "Armeria," the "Wasp," and the torpedo boats. There were one or two torpedo boats there, "Porter" and "Ericsson" and the "Foote," at different times. They were not all there at the same time.
Q. What port had you blockaded before that of Santiago?
A. We had not blockaded any port.
Q. And your first blockade duty was at Santiago?
A. Santiago.
Q. And then at San Juan?
A. Then at San Juan.
Q. When did you first know of the proclamation of the President of the blockade at San Juan?

A. When we returned to—we knew it officially when we
342 returned to Guantanamo from Key West, having been there to repair our steering gear, and we were ordered by the admiral to go to San Juan to blockade.

Q. What date was that?

A. That was in July; I should say about the 9th or 10th.

Q. Then you went directly to San Juan?

A. Went directly to San Juan.

Q. From Guantanamo?

A. Yes. I am under the impression also we learned it at Key West, but we were sent officially by Admiral Sampson from Guantanamo to blockade the port and harbor of San Juan, and we arrived there on July 14th from Guantanamo.

Redirect examination by Mr. BRYAN:

Q. When did you know of the blockade at Key West—the proclamation of blockade at San Juan?

A. It was between the 4th and 9th; I don't remember.

Q. (By Mr. JONES.) Of what, July?

A. July.

Q. (By Mr. BRYAN.) When did you arrive at Key West?

A. We were there on the 3rd, I think.

Q. Where had you come from?

A. From Guantanamo.

Q. When did you leave Guantanamo?

A. We went direct from Guantanamo to Key West.

Q. When did you leave Guantanamo?

A. That I don't remember.

Q. How many days' passage?

A. Three days possibly.

Q. The blockade of Santiago of which you speak was during the time Admiral Cervera's fleet was in Santiago?

A. Yes, sir.

Q. It was not the blockade of a commercial port, but the blockade of a port where the Spanish fleet had taken refuge?

343 A. Yes, sir. I would like to say further, it was a blockade commercially as well, because we were in war with the Spanish Government.

Q. But I mean the special significance of the number of vessels was owing to the fact of Cervera's fleet being there.

A. Owing to the fact that it was a naval operation against an enemy's fleet.

Q. And for that reason the concentration of vessels there?

A. Yes, sir.

Mr. BRYAN. (Taking the chart.) I would like to have this marked with a large "A," so that we can have some reference to it.

(It is so marked by the court.)

Q. Referring to the chart marked big "A," in your testimony of October 19th, 1898, if the "New Orleans" was at the point "C," steering on a course southwest for Morro, and saw the "Olinde Rodriguez" on her starboard bow to the westward with her masts wide open, could the "Olinde Rodriguez" be on a course south 73 east.

A. Her masts would be open; well open.
Q. Would they be wide open?
A. They would not be wide open.
Q. Any further remark on that, Lieutenant?
A. I have none other to make that I think of.
Q. If the "Olinde Rodriguez" was sighted from the position marked "I," 12 miles off to the west, half north, and the course was south 73 east true, would she have passed to the south or north of the point "C?"
A. She would have passed to the north.
Q. How much to the north of the point "C?"
A. Directly to the northward of the point "C."
344 Q. Yes.
A. True?
Q. Yes.
A. Nearly 2 miles and a half.
Q. If she had been on a course south 69 east, would she have passed to the north or south of point "C?"
A. True?
Q. True.
A. From the same point?
Q. Yes.
A. She would have passed to the northward.
Q. How much?
A. Less than half a mile.
Q. If the "Olinde Rodriguez" was at the point "D" on a course south 73 east, where would that course land her?
A. This is a true course?
Q. Yes.
A. With reference to what, sir? You mean where would she run into the shore?
Q. Yes; where would she go?
A. She would strike the northwest end of Culebra Point.
Q. If she was at the point "D" on a course south 69 east, where would she come to?
A. She would strike Cape San Juan.
Q. On the course that you traced for Mr. Govin on the French chart marked capital "'B' W. H. B. 19th October, 1898," in response to his question giving an alleged route with variable courses, will you measure the distance between the point at which the "Olinde Rodriguez" would pass San Juan off Morro on that course as traced by you?
A. On a north and south line?
Q. Yes.
A. The course I laid out, or his course?
Q. The course you laid out.
Mr. GOVIN. Which course do you refer to, the first or second? The first is incorrect and the second is correct.
Mr. BRYAN. The course traced by you.
A. That, as I recollect it, is south 74 east. This is the course
345 I traced in answer to the question [indicating]; 11 miles.
Q. (By the COURT.) Are those miles [referring to chart]?
A. Each one of those small divisions is a mile; each one of the dark shaded marks is 10 miles.

Q. Are they the same?

A. Yes, sir.

Q. (By Mr. BRYAN.) Now I repeat my question, having reference to the same route with the courses given, the last course of which as given was south 73 east. Will you state how far the "Olinde Rodriguez" on that course would pass San Juan to the northward?

A. Nine miles; full nine miles.

Q. Will you indicate on the chart marked capital "A" the position of the "New Orleans" when she was directly north of Morro on the morning of the 17th. Mark it with the letter "K."

(Witness so marks it.)

Q. At what hour was that?

A. 5.15 a. m.

Q. Will you mark the next position where she was at the next observation with the letter "L?"

A. Yes, sir.

(So marked.)

Q. At what hour was she at "L?"

A. At 6.50 a. m.

Q. (By the COURT.) When was she at "K?"

A. 5.15 a. m.

Q. (By Mr. BRYAN.) What hour was she at "I?"

A. At 7.20.

Mr. BRYAN. I ask the witness to mark in ink the point "C," plainly, and the intersection of the lines which meet at the point "C," which he has testified to have been the bearings of the "New Orleans" at 9 a. m. on the 17th of July with Morro and Vacia Telagas Point.

(The witness so marks it.)

346 Q. Lieutenant, what time of day on the 17th of July did the "Olinde Rodriguez" leave the "New Orleans?"

A. About 2 o'clock, I think.

Q. In the afternoon?

A. 2 o'clock in the afternoon.

Q. About five hours after you had taken your own bearings at 9 a. m.?

A. Yes, sir.

Q. What had been the movements of the "Olinde Rodriguez" and the "New Orleans" during those five hours?

A. My impression is we were practically in the same position; that there was no marked change of position that I recall.

Q. You do not think you had been under way?

A. No, sir; we were not under way, as I recall it.

Q. Only one other question. You spoke in the morning of having taken bearings, Morro bearing south, and afterwards Morro bearing southwest after running to the eastward. How did you take those bearings?

A. They were taken by the alidade, the ship having been put on her course east by standard compass. They were taken when the Morro bore south or abeam. The two bearings were known as the beam and quarter bearings. We were steering east by compass and the alidade was turned on the same compass course, east, the ship's heading. The sight vane was turned toward the Morro, and when the Morro bore

south it bore abeam. We continued on that course, east by compass still, the alidade being set to the ship's head in the same way; the sight vane was then turned towards the Morro, when it bore southwest or on the quarter, which was also the time reported when the patent log was read and reported to the officer. I was there.

Q. What kind of a bearing do you call that?

347 A. We call that a four-point bearing.

Q. How does a bearing of that kind compare with a cross bearing?

A. A bearing of that kind is very much used in coasting, picking up one light, running from one light to another, and is considered for the purposes of navigation reliable. The cross bearing, however, would fix your position more accurately; that is to say, if there were any drift or current it would eliminate the element of drift or current. A cross bearing at any time would fix your position within the smallest limit possible.

Q. The cross bearing that you took as indicated by point "C" on the chart on Morro and Point Vacia Talegas is, then, the accurate bearing?

A. Yes, sir; I regard that as accurate.

Q. Is there any element of doubt in it in your opinion?

A. No, sir; not in my opinion.

Recross-examination by Mr. GOVIN:

Q. Referring to chart marked "A," in answering Mr. Bryan when you said that the "Olinde Rodriguez," following either of two courses which were mentioned by Mr. Bryan, would pass north of the point marked "D" on the map, where did you locate or suppose the "Olinde Rodriguez" to be, and please indicate it on the chart?

A. I don't recollect in the question the ship having passed north of point "D."

Q. I mean "C," point "C." You answered that the "Olinde Rodriguez," following two courses mentioned by Mr. Bryan, would pass north of the point "C." Now, from whence came the "Olinde Rodriguez?" Mark the position on the chart.

A. Where she was to the northward of point "C," or where

348 she had come from before that?

Q. You said if she followed the course she would pass to the northward of that point?

A. Yes, sir.

Q. Now, she must have been somewhere to follow the course. Where was she?

A. At what time?

Q. You said she would pass north. If she were where? That is just the point.

A. I would like to say, in answer to that question, if her position was assumed or stated in the question as there on one course [indicating], these two courses were in answer to the first question, as I understand it. The "Olinde Rodriguez" 12 miles west a half north, and steering two certain courses to a certain point.

Q. Now, I ask you to mark that point on the chart "O" and under score it.

(Witness so marks it.)

Q. If the "Olinde Rodriguez" were either to the south or *or* to the north of that position, would she necessarily, in taking the courses that Mr. Bryan referred to, pass north of the point "C?"

A. If she were to the southward or northward, would she necessarily pass to the northward of the point "C?"

Q. Yes; following the courses that Mr. Bryan mentioned?

A. If she were to the northward she would necessarily go to the northward?

Q. And if she were to the southward of the point marked "O," would she necessarily, in following either of the courses mentioned by Mr. Bryan, go north of the point "C?"

A. No, sir; not necessarily. It depends on her position south. If you are far enough south on either course, she would pass to the
349 southward of point "C."

The COURT. I do not understand that if she reached point "C" she was sailing on a course at all.

Mr. GOVIN. No; she was not.

Q. In answer to Mr. Bryan's question as to where the alleged course of the "Olinde Rodriguez," either south 69 east or south 73 east, would bring her to, you have testified that in one she would come to Cape San Juan and the other to the Culebra northwest coast. Both of those courses would clear her of the harbor of San Juan, would they not?

A. They would clear her of the harbor of San Juan.

Q. Does it necessarily follow because a ship is on a certain course that she is going to a point where that course may possibly lead her?

A. No, sir.

Q. May it not be that she is going in that direction to get a bearing?

A. It may be.

Q. Isn't it probable that when that point is not a port, but a light, that she is going there for the purpose of getting a bearing or verifying her position?

A. Yes; under ordinary circumstances.

Q. How did you locate the "Olinde Rodriguez" at the point "O," on the chart marked "A?"

A. The point "O" bears west one-half north from the 7.20 position of the "New Orleans," 12 miles away.

Q. Did you see the "Olinde Rodriguez" there?

A. I did not.

Q. Then, your placing the "Olinde Rodriguez" at the point "O" is taken from testimony that you have heard or from questions that have been asked you; not from you' own knowledge?

350 A. Yes, sir.

Q. Assuming the "New Orleans" to have been at the point "I," if the "Olinde Rodriguez" then bore west by north, and then bore west half south, would not that change her position, and about how much?

A. At what distance? I can not answer that. It depends.

Q. On what?

A. On the distance; that is, the bearing would not. That would be a point and a half difference in bearing.

Q. That is what I want. Assuming her to be 12 miles from the point marked "I" on the chart, will you kindly mark her position bearing from that point west half south?

(Witness so marks it.)

Q. Kindly mark that "G."

(Witness marks it.)

Q. Now, will you kindly mark the position bearing west by north 12 miles from the point "I." Mark it "5."

(Witness so marks it.)

Q. Assuming that the "Olinde Rodriguez" was on a course that would carry her about one-half a mile from the point "C," starting from the point marked "O," would not she pass at different distances from the point "C" if she started from either "5" or "G" on the same course?

A. Yes; she would have to steer a different course from either of those two points to pass within a half a mile of "C."

Q. (By Mr. BRYAN.) Will you indicate the distance on that chart to the point "O," north of Morro?

A. It does not lie north of Morro.

Q. How far is it on a line north and south? How far is that
351 off the coast abreast of Morro?

A. You mean magnetic north?

Q. You located point "O" with reference to this bearing here, and now what I want to know is, how far is "O" off the coast abreast and north of San Juan?

A. 8½ miles.

Q. Now, Lieutenant, if the "Olinde Rodriguez" passed Morro to the north 8½ miles off the coast—that is, passed at the point "O" on a course south 73 east—would she pass to the north or to the south of point "C," and how much?

A. It passes to the northward one mile.

Q. (By Mr. GOVIN.) If Captain Folger should have testified that the "Olinde Rodriguez" bore from the "New Orleans" west half south, do you know any reason why that should not be true?

A. No, sir.

Q. Do you think that the point "O" on chart "A" is on a course from Cape Frances to San Juan?

A. To Cape San Juan or to San Juan?

Q. To San Juan?

A. No.

Q. Do you know of any reason why a vessel bound for San Juan should steer a course to pass at the points either "O," "G," or "S," if bound for San Juan?

A. Not in an ordinary commercial voyage; no.

Q. Would not she pass in that vicinity, if bound for St. Thomas and making for the north Culebra passage?

A. Yes.

Q. The fact that the "New Orleans" was about 12 miles from the Morro, the Morro bearing southwest ¾ west, would a vessel endeavoring to elude the "New Orleans," coming from the westward and endeavoring to enter Port San Juan, go to the points either "O," "5," or "G?"

A. She might.

352 Q. Why?

A. To look over the ground.

Q. Wouldn't it be shorter for her to go nearer the shore and in a

direct direction of the entrance of the port than to go north of it 9 or 10 miles?

A. It would be a nearer and shorter route to the port of San Juan.

Q. At a point between 2½ and 3 miles from the Morro, the Morro bearing about southeast, would not a vessel be further from the "New Orleans," the "New Orleans" being at the point "L," than if she were at either of the points "G" or "5?"

A. From the point "L," the "New Orleans" being there?

Q. Yes.

A. Yes.

Q. (By Mr. BRYAN.) On these hypothetical questions, if a vessel wished to run the blockade, wouldn't it be safer to go out or off the port and attempt to run in, having the whole view of the semicircle north of the coast, rather than attempt to run in near the coast and possibly be surprised near the coast by a cruiser coming down upon her?

A. Yes, sir; that is the way I should run a blockade if I were doing it.

Q. That is, you would go to a point of observation and determine whether you could safely run or not?

A. Yes, sir.

Q. And make a dash, and if you could not make a dash you would go on?

A. Yes.

Q. (By Mr. GOVIN.) Do you know the range of the batteries, the Morro and shore batteries around San Juan?

A. I do not know, sir, from personal observation. We never fired a shot in anger.

Q. Were any fired in anger at you?

A. No. At the "Yosemite," I believe, but not at us.

353 Mr. LATHROP. With this witness this concludes our examination in New York.

The COURT. Does it conclude your case?

Mr. LATHROP. I would not like to state that here now. The 90 days which the order provided within which we should take our further proof has not yet expired, and I am not now prepared to say whether we would make a motion before your honor, when your honor was in jurisdiction to hear it or not, but simply we have come here by consent to take the testimony of such witnesses as your honor saw fit to hear, and that concludes our duties under the consent. Now, of course, it would be a matter for your honor, and in your honor's discretion, sitting in proper jurisdiction, to determine whether or not our examination was concluded, or whether we have the right to proceed, to go further upon making proper showing. That is all. I do not think we are now in a condition to say.

The COURT. Do you think you are likely to offer any other testimony?

Mr. LATHROP. So far as I know, your honor, I do not; but I will have to advise with the Attorney-General in regard to this matter. So far as I know, our examination is probably concluded; but I do not wish to put myself in a position here now of saying absolutely that it is so.

Mr. GOVIN. If your honor please, I do not think that the construction that the district attorney attempts to put on the order is one that can in

law be made. It is the same point I made at Charleston, and I renew it now. The testimony should be taken and taken all at once. The order simply means and the practice in admiralty that they should have
354 a certain number of days in which to begin their testimony, but once beginning it they can not chop it up into a series of offers, for the very reason that it may lead possibly to irregularities. It puts us at a disadvantage; affords a chance of studying up the case and fortifying it where it is weak, which is the very thing that the law desires to prevent. They should present their case all at once, once having begun it. It is their own fault if they have not proper testimony or enough testimony, and unless they show good reason in law for presenting further testimony, I submit the case ought to be closed now by your honor so far as the Government's case is concerned.

Mr. LATHROP. I admit the proposition of my friend, except that we are not now in the proper jurisdiction to say that or to make a motion such as my friend anticipates.

Mr. BRYAN. On that point may I say a word? I was thoroughly astonished when my friend, Mr. Govin, made that statement in Charleston, and I am equally so now, because the language of the order is the language of the 59th rule of the Supreme Court in equity, and the Supreme Court has passed on that. It means at any time within the 90 days, according to the convenience of counsel. When the time was given it was because it was a fixed rule of the court.

Mr. GOVIN. The 59th rule does not apply. It does not apply to cases in admiralty.

Mr. BRYAN. We can take the depositions de bene esse anywhere.

Mr. GOVIN. By showing good reason.

355 The COURT. The court wishes this case ended, and if the Government has other testimony it will give it within the 90 days if given the opportunity of offering it. If it has not other testimony the Government should close its case. The examination of these witnesses here was suggested for the convenience of one side as much as the other, and if the Government has finished its case then the defense is put upon its proof and it should go ahead and ought to have the opportunity of offering that testimony now. Is that your desire?

Mr. GOVIN. No; I can not say that is our desire, because I take it that your honor must first pass upon the question whether there is anything in this case to warrant your condemning the vessel, and if you come to that conclusion—it remains with you to decide; perhaps you have already decided—we should have an opportunity to then put in further proof; but as it stands now I do not think there is a particle of evidence in support of the condemnation of this vessel. I do not care to argue that question now. I reserve that argument until all the evidence is in. If you should decide to hold the vessel we will make a proper motion for leave to take further proof.

The COURT. Of course the court is not going to intimate to counsel what its opinion is on the case until it is fully presented. I should be greatly surprised if counsel should consider that there is nothing in the case to require them to put in some testimony.

Mr. GOVIN. As I understand the practice it is for the testimony
356 to be taken on behalf of the captors first simply from the testimony found upon the ship and from the ship's papers. In this

case that testimony was taken and there was not sufficient to condemn the vessel. Then, upon affidavit, your honor allowed the captors to present further proof, which they have done. Now, it seems to me, the position of the case is exactly as it was at the time that the testimony of the ship was considered. It is for your honor again to say whether further testimony shall be taken; whether there is sufficient to condemn the vessel; and as I have said it was understood that if, in your honor's opinion, after examining the case, and without arguing it upon its merits now, there was sufficient to have some explanation, requiring evidence to satisfy some doubt, why, we should have the opportunity of presenting our proof. I do not see that the fact that further testimony has been taken changes the practice as we understood it from the beginning in this case. Your honor will remember having filed an opinion which practically decided that there had been nothing shown which would condemn the vessel, and calling upon the Government to show something. Now, has the Government shown anything? If it has, why, we will have to go on with the case. If it has not, it is in the same position it was then under your decision.

The COURT. Well, undoubtedly the Government has shown something; has shown a good deal. There is testimony of witnesses that the ship was heading directly for the port of San Juan. That was not before the court before; no testimony of that kind.

357 Mr. JONES. The trouble about the case was that established practice in prize cases requires that the passengers on board this steamer should have been interrogated, and they were not interrogated.

The COURT. There is nothing requiring all the passengers to be interrogated.

Mr. JONES. There is a rule of law in prize cases that every one on a vessel who could by any possibility have any means of knowledge shall be examined by the prize commissioners, and the object of that rule is to prevent the very thing that has been done here, namely, the gathering of evidence outside of the vessel. Your honor will find in all the cases it is only in the rarest instances that a judge will grant either party an opportunity to present further proofs. Now, there was on board this vessel, I undertake to say now within my own knowledge, several highly respectable, intel'ligent passengers who were on deck at the time, knew of the course of the vessel, saw the whole thing, and the prize commissioners refused to examine them.

The COURT. That is the first time that has ever been brought to my knowledge. I know nothing about it.

Mr. JONES. I believe that is true, your honor, and I believe if your honor had ever been shown when this thing was going on we would have our ship released long ago. There is no less person than the secretary of state of the Republic of Hayti, a highly respectable and a highly inte'ligent man and a lawyer by profession, whom the prize commissioners absolutely refused to examine. Now, I only allude to that as showing the irregularity of this practice. This is a military

358 court. It is not a court of common law, and the common law rules of evidence do not apply. It is the easiest thing in the world for counsel to find out what the practice is, because it is very clearly established that the evidence in all prize cases must in the first

place come from the ship and the persons on board the ship, and if the evidence clearly shows—that evidence clearly shows—that the ship is not guilty of the offense charged she is entitled to her discharge, and the parties have no right under the law to go seeking around the world for witnesses. Now, that has been done in this case, and I understand counsel want to continue it. This whole line of evidence ever since your honor rendered your preliminary decision in this case is absolutely in violation of law, with all due respect to your honor. I do not mean to indicate that your honor intends to violate the law, but the books are full of the establishment of the rule that it is a violation of law, and it is a violation of law to the great prejudice of this company, and it has really assumed an aspect of international difficulty, because this thing has been reported to the minister of foreign affairs. It is true that these prize commissioners and the district attorney have tried this case upon the suppression of the evidence.

Mr. LATHROP. I hope my friend does not mean to say that the district attorney has willfully suppressed anything in this case.

Mr. JONES. I mean to say that is the statement of inte'ligent witnesses on this vessel that they offered to give their testimony and
359 that the district attorney would not allow them to be examined.

Mr. LATHROP. I never heard of that before.

Mr. JONES. I do not believe you have, Mr. Lathrop.

The COURT. That would be a dereliction of duty, and it is hardly to be conceived of.

Mr. JONES. I am free to say that I do not believe Mr. Lathrop would have permitted such a thing.

Mr. LATHROP. I certainly would not. I never had an intimation of such a thing.

Mr. JONES. But, if I am informed correctly, and these witnesses have no object in misstating these facts to me—if I am correctly informed, this thing is a scandal. But, leaving that out entirely, that is no reason, of course, why your honor should rule the case in our favor; but I come back to what I have stated before—that this means of getting testimony, these instruments of evidence which the law says the court must resort to at the hands of the court under this peculiar system of practice, the court having failed to do that, we are entitled under the law, and have been ever since that day, to a discharge of this vessel. Now, if these witnesses had been examined, if this very intelligent gentleman who is a lawyer by profession, a high functionary in the Republic of Hayti, a very respectable gentleman, if he had been examined—he is the most indifferent man in the whole lot of witnesses that have been called—if he had been examined, your honor would never have held this vessel 15 minutes. And his evidence is susceptible of being made cumulative upon that point. But these prize commissioners have refused to
360 take these depositions. Now, upon that ground alone, the fact that the law gives us the right to a discharge when the evidence on board fails to convict, your honor should grant an immediate discharge of this ship. Now, it is only in cases where through some accident, such as the departure of a witness at an intermediate port, that the court will grant leave to take further testimony. But here every bit of evidence as to this capture, as to the conduct of this vessel with respect to running

the blockade, was on board of her, and those depositions as taken by the commissioners according to your honor's own declaration entitled her to a discharge, and your honor said you would unhesitatingly grant an order for her discharge were it not for the fact that the Government asked for further proof. The Government had no right to ask for further proof, and, with all respect to your honor under the law, your honor had no right to grant such an order.

The COURT. Well, you need not say that. There is no doubt the court had the right of its own motion to order further proof.

Mr. JONES. If your honor had any doubt about it, but you said you had none.

The COURT. I said I had no doubt there was not testimony to convict upon the evidence of the attempt of an alleged breach of the blockade on the 5th of July. On that ground I would have discharged the ship, but the court said that testimony relating to the attempted breach of the blockade was testimony which, in the nature of things, was not likely to appear from the parties aboard the ship or from the papers aboard
361 the ship, and that in the nature of things the testimony of the captors was essential in order that the truth of the charge should be established, and for that reason the court ordered further proof. And that that was entirely within the law and entirely within the right is a question that is already decided, and I will hear no further argument upon that point. There is a court to which that argument may be addressed, but not to this.

Mr. JONES. Well, sir, I suppose that every respectful application can be addressed to a court at any time before decision.

The COURT. Yes.

Mr. JONES. Now, I make a motion.

Mr. LATHROP. I object to any motion being made here because the court has no jurisdiction to hear it. It is sitting here without jurisdiction to determine any motion, and therefore I object to the motion being made.

Mr. JONES. Now, I say in answer to your honor's suggestion that the evidence as to this violation of blockade was on board that ship.

The COURT. That is a point that has never been brought before the court at all.

Mr. JONES. I think I fail to make myself understood. The rule of law is, if I understand it, that when the prize commissioners have examined the persons on board, and that evidence fails to make out a case, the vessel is entitled to a discharge. Now, your honor says in the nature of things testimony should be taken outside. There was testimony on board which was not taken. The practice is that testimony shall not
362 be taken outside. The law does not say in the nature of things that testimony shall be taken outside. It says that when the testimony on board fails to make out a case of condemnation the vessel must be discharged, unless for some particular reason the judge has decided that the evidence—has doubts about the case on the evidence, in which case he can grant an order for further proof.

The COURT. And that was precisely this case.

Mr. JONES. Then I fail to understand your honor's opinion. If that is your honor's opinion now, I must say that my ability to understand the English language embodied in the opinion is very deficient.

The COURT. The opinion speaks for itself.

Mr. JONES. I am quite aware of that, sir, and I am trying to state it. Ships of this class are not likely to engage in that kind of business. She was on her return voyage, laden with tobacco, sugar, coffee, and other products of that region, for which no market would probably be found in Porto Rico. She had left San Juan 12 days before, and the profit to be gained by returning was so inconmensurate, in the opinion of her officers, that they had no intention of entering that port. An order for the discharge of the ship would be made without hesitation, but for the motion of the district attorney for leave to take further proof.

The COURT. That was based upon the affidavit, or, rather, the testimony of Lieutenant Russell and of another man, an ensign, which was taken before the prize commissioners in preparatorio—taken de
363 bene esse—and it was not accepted by the court as testimony in the cause on the hearing for condemnation on the first hearing; but the district attorney, upon that testimony and those depositions, moved for a further hearing; and inasmuch as those depositions, treated as affidavits, stated that as a matter of fact this vessel was heading directly for the port and attempted to elude the captors and get into the port, and was only arrested when she was fired upon, the court considered that that presented the case in a phase in which it had not appeared at all in the testimony in preparatorio, there being no credible testimony from any witness on board the ship tending to show that she was making for that port, and for that reason the court felt it was bound to grant the motion for a further hearing and for the taking of further testimony. If the court had been advised then that there were intelligent passengers on board that ship who had opportunities of knowing, and who did know, and who could have testified in such a way as to have produced any conviction in the mind of the court, it may be doubtful whether the court would have granted it. But that was a point that was never presented to the court.

Mr. JONES. That was the duty of the prize commissioners. That is the point I am making now. It was the duty of the prize commissioners to exhaust the case of the Government. Now, I fail to make myself understood if your honor assumes that I am criticising or discussing the propriety of the judge's action on these depositions with respect to the condition of mind that the judge was in. What I say is that the depositions in preparatorio when they—not the depositions taken de
364 bene esse, the affidavits outside—but when they do not start a doubt in the judge's mind, the ship is entitled to a discharge. Now, your honor has stated that precisely. That "these depositions do not raise any doubt in my mind of the innocence of this vessel, and I would unhesitatingly grant her discharge," etc. All I say now is that we were entitled under the law to our discharge at that time.

The COURT. If it was, as you state, that a judge should not grant leave for further proof except upon certain motions, but the practice as I understand it is that the judge of his own motion may grant leave for further proof.

Mr. JONES. When he has doubt, your honor, but I understand you to say that you had no doubt about it.

The COURT. I said I had no doubt as to the—there were two charges before me, one for the breach of the blockade on the 5th of July. I

had no doubt about that and I would have discharged the vessel without hesitation, but the depositions of the prize crew, Lieutenent Russell and others—of course they raised a doubt in my mind, and it was upon that that I granted leave for further proof.

Mr. JONES. I hope I will be permitted to make myself understood about this. I say that these depositions had no place in the case upon your honor's preliminary examination of the case. It was the depositions from the prize commissioners, whose duty it was to get all the information they could, and that mass of evidence presented to your honor, and when that was presented in itself, such evidence as
365 came from the prize commissioners, your honor had no doubt that this vessel was entitled to her release; and that evidence, I say, is the evidence that your honor ought to have looked at.

Mr. GOVIN. In that line may I suggest, if your honor please, that while it is true that the affidavits of Lieutenants Russell and Tarrant and others guided your honor in making the order for further proof, you in your decision came to the conclusion that it would require overwhelming proof on the part of the Government to upset the theory and the fact that this vessel was innocent. Now, I submit that when these affidavits came to be tested under cross-examination not a single statement in any of them bore the stamp of truth. That is to say, truth in the sense of error. That since that time up to this there has not been any evidence presented that could overwhelmingly decide or show or imply that the vessel was going to San Juan, with the exception of evidence that did not come from the captors, but came from a man entirely unconnected with the captors, and he said that in his opinion the vessel was heading for San Juan. That is all that has been positively stated. As to that it is perfectly evident that the vessel could not head in the direction she was going except for San Juan, and that at a distance of 5, 6, or 8 miles, she naturally would appear to be heading for San Juan if on the course we claim she was. If she was heading any other way she would not have been on that course. And no case has been made out to change your honor's opinion as expressed in the opinion that is on file.

366 The COURT. That is a question for argument. I will hear argument at the proper time about it and when the testimony is closed.

Mr. LATHROP. I do not propose now to enter into that for one moment; but, with your honor's permission, I do propose to say a few words here in vindication of what I deem a most unwarranted slander upon gentlemen whom I know to be above what has been charged against them. My acquaintance with General McCready and Major Barnwell has been for years of such a character—my years of acquaintance with them, my knowledge of their methods is such—that I am able here and now and anywhere to stamp as utterly false and groundless the charge that they have acted in a scandalous manner in any professional duty which came before them. My limited acquaintance with Admiral Irwin, the other member of the board, has been such that I feel I can say that of him, and his long years of service for his country, his honorable retirement from that service, ought to be sufficient in the mind of every man to stamp as utterly false that he is capable of such an action; and I say

that my friend is misinformed and that his informant is a falsifier; and I say it in the strongest terms that whoever informed him of this—and I say it upon my own responsibility—that whoever gave him that information falsified, was a falsifier, and told him an untruth. It cannot be true. In regard to the action of my own office, I desire to say Mr. Hughes, the gentlemen to whom reference must be made, my acquaintance with him began when I went into the office of district attorney in my present term, something over a year ago. I was closely asso-
367 ciated with him during that time. Differing, as we did, politically, and by reason of his having been appointed to another office of honor and profit, our connection was severed; but I have never in all my experience with him known him to perform an act or utter a word which would give color to any charge that his action could be other than that of an honorable practitioner. That he might make mistakes, that is possible.

Mr. JONES. That is all I said.

Mr. LATHROP. That possibly this case has not been conducted in a scientific manner; that it may be that it is already lost upon appeal to the Supreme Court; my friends ought not to complain of that because that is to their advantage. Our client is able to respond to every cent of damages that his clients have suffered or may hereafter suffer in this case, and they will find the United States of America solvent when this case ends and able to respond. There is no doubt about that. Every error that we have made they should not complain of in this court. Their argument in that will be all right when they get where we have to sustain a decision, if perchance the court should grant one in our favor. That is all I have to say.

Mr. JONES. I hope your honor did not understand that I personally cast any reflection upon the district attorney. I believe that Mr. Lathrop——

Mr. LATHROP. Perhaps his honor can not understand English either.

The COURT. I understood that you charged that the testimony
368 which, in your opinion, would have vindicated this ship from the charge of attempting to breach the blockade was offered to the district attorney and the prize commissioners, and that they refused to accept it. That is an astounding charge.

Mr. JONES. I said that my information, from a most reliable source, was that that was done, and I said that if that was done, considering the character of this case, it was a scandalous thing.

The COURT. I quite agree with counsel that if that was done it was scandalous.

Mr. JONES. I state merely what is my information.

Mr. LATHROP. My friend stated he thought it would develop in the course of this case that the conduct of it had been scandalous. That was my understanding of his words.

Mr. JONES. Then please allow me to correct it now. I am trying my best to assure my friend on the other side that I am not making any charge of irregularity against him. I say that the case has not been conducted in the way that prize cases are required to be conducted. The Government, in the prosecution of an ordinary case, has got a right to cull out witnesses—refuse those that are unfavorable and take those that are favorable. That is the ordinary practice, and it is done here; but

the law in prize cases is otherwise and requires an entirely different procedure, and if the statement of this gentleman, with whom I have had a personal conversation, and of the other witnesses who have communicated with me, is true, then there has been at least such an irregularity in these proceedings as to entitle us to a discharge.

369 The COURT. Now, in order that it may come up in the proper way, you had better present the affidavit in which the statement is made. I will hear it then. This may properly be stated, I presume that these witnesses were French, or French speaking, and not English speaking persons.

Mr. JONES. Yes, they are French speaking.

The COURT. I think that the prize commissioners and the district attorney, or assistant district attorney, are not acquainted with the French language, and possibly some misunderstanding may have arisen from that cause.

Mr. JONES. Admiral Irwin must be familiar with French. Most of the naval officers are, and there was an interpreter there to take down the depositions.

The COURT. I do not know at all what was the course of the procedure in the case. I happened to be at that time attending to my duties in Greenville, as I think Mr. Lathrop was. My impression is we were both absent, and of course I understood the counsel as making no reflections upon the district attorney personally. He was with the court at Greenville, as I remember, at the time this investigation was had, and I do not know what testimony was offered. It would be a grave dereliction of duty, which is scarcely to be conceived of, if the prize commissioners had offered to them testimony which would have tended to release this ship and had refused to take it, and it is hardly necessary for me to say that I think that that conduct is inconceivable in these gentlemen. I know Mr. McCready and I know Mr. Barnwell, and I know that no more highminded and correct men are at the bar at Charleston, or

370 at any other bar. They are both lawyers of experience, gentlemen of distinction and of the highest personal character. Whether they conceived, or whether any of the commissioners conceived, that the duty of the prize commissioners was only to get testimony to convict or not, I do not know. I have never entered into the workings of their minds upon that subject. It may be possible that that may have been their conception of their duty. It is not the court's conception of their duty nor is it the court's conception of its duty. But this discussion appears to be irrelevant to any motion before the court. The court thinks that the Government should close its case, and if it has any further testimony to offer that cannot be taken here the court will go to Charleston and take it, for the case has been sufficiently long before it. The Government has had abundant time to prepare its testimony, and if it is not ready and the defendants are ready to go on the court will rule that the case should be closed by the Government, and let the defense, if they are so advised, put in their testimony.

Mr. JONES. May I ask counsel if they have made arrrangements for the production of the log of the "New Orleans?"

Mr. LATHROP. We are at sea. The "New Orleans" is at sea. As to the method of procuring it, whether it is possible to take a ship's log under the regulations of the Navy, I do not know anything about it.

Mr. JONES. I do not know of any paper that is not subject to judicial process and subpœna.

Mr. LATHROP. I do. There are records in Washington that are not subject.

371 Mr. JONES. Only such records as are declared to be privileged.

The COURT. If the ship ever comes here with the log on board there will be no difficulty about it. Captain Folger will produce the log or his case will go by the board.

Mr. BRYAN. I might suggest this: We have a representative at the port of arrival of the "New Orleans," and take a copy of the log.

Mr. JONES. No; I think that in the many admiralty cases, as I believe you have, it has been your experience that the original log book in a contested case is an important piece of evidence. It is only in rare instances, where suits have been brought over transactions recorded in log books, that I have not observed some interlineation or erasure or some subsequent change in the matter, and I would like to see the original.

Mr. BRYAN. What I meant was that we should appear there and take such a copy as would be satisfactory. If they are not satisfied with the copy, why, of course——

Mr. JONES. I have had a most remarkable case of that kind, with a perfectly honest witness, too.

Mr. LATHROP. Then, with the single exception of the log book of the "New Orleans," I will declare the case of the Government closed with its present proof.

The COURT. The Court does not wish the district attorney to understand that it presses him unduly to close the case or decide that question to-day. The Court wants all the light possible upon this case, and at the last moment, if it can get it from any source, it will receive it;

372 but the defendants have rights here, and the case can not be protracted indefinitely, and in fixing the 90 days it was not at all in the Court's mind that the Government should consume 90 days unnecessarily, and as intimated, and as the district attorney knows and the Court knows, the district attorney has endeavored, in every possible way, to speed this hearing, and the delay is not at all attributable to any negligence or fault on his part. But the case must end as soon as possible, so that the defense may know what they are to do; whether they are to make their case, present testimony, or to rest it upon the case as made.

Mr. LATHROP. They understand as well as I do that there may be some delay about it, but they know what it is we are to produce.

Mr. JONES. Where is the "New Orleans?"

Mr. LATHROP. She is on her way to Philadelphia. I think she left day before yesterday.

Mr. JONES. With that exception, I understand the district attorney has closed his case.

Mr. LATHROP. Yes; and besides that, you are aware of what it is. It is not something that will be a surprise to you.

Mr. JONES. I ask counsel now if he will loan me this copy of the log to look at.

Mr. BRYAN. If the counsel wishes to agree on this matter and put it in, we will do so.

Mr. JONES. No, I do not agree. I ask you to let me look at it.

373 Mr. BRYAN. I would be glad if the counsel would make an examination of the papers.

Mr. JONES. You say it is a piece of evidence which we are entitled to have.

Mr. BRYAN. Yesterday we asked to see certain papers submitted to the court, and we were not allowed even the courtesy of looking at certain papers.

Mr. JONES. Your honor knows what took place. I understand counsel refuse to loan me this copy of the log.

Mr. BRYAN. We offer the copy in evidence, certified to by Captain Folger and by the lieutenant. If it is not received we will not loan it.

(Mr. Hagood produced the papers in the case in his possession, under the direction of the court of this morning.

Mr. Govin suggested that the men in charge of the vessel should be paid, and that some order should be made in the premises.

The district attorney stated that he supposed these expenses of the preservation of the property, while the property is in the possession of the Government, should be paid by the Government, the same as any other expense in the matter.)

The COURT. The matter has given me a good deal of concern, and the fact that the expense has been very considerable has weighed upon me very much. I have done what I could to have it minimized, and after conference with Mr. Govin and Admiral Irwin, the prize com-

374 missioner, it was agreed that at least 32 men should be retained upon the ship, the crew in all consisting of 75 or 80, and the marshal at that time was instructed to provide for the maintenance of the 32 men. They are there voluntarily, and I supposed they would have to be paid.

Mr. LATHROP. There is no doubt about that. It is only a question of how it shall be done.

The COURT. Arrange about that with the district attorney, and whatever order is necessary will be made.

(The third chart referred to by Lieutenant Rooney in his testimony, and on which he laid certain courses, was offered in evidence by Mr. Bryan and marked by the court "C," October 19th, 1898, W. H. B.")

The examination was then adjourned.

375 *Log of the United States cruiser "New Orleans" (2nd rate), under the command of W. M. Folger, captain, U. S. Navy, blockading San Juan de Puerto Rico, Sunday, July 17th, 1898.*

RECORD OF THE MISCELLANEOUS EVENTS OF THE DAY.

Commences and until 4 a. m. clear and pleasant. Gentle breezes from east. Sea smooth. Ship on station, heading towards the Morro during entire watch.

(Signed) E. F. LEIPER, *Lieutenant.*

4 to 8 a. m. clear and pleasant. Gentle breeze from E. by S. and ESE. Bar. rising. Sea smooth. At 4.50 put over P. L. reading 6.2 and headed east. At 5.15 Morro bore (abeam) south (p. s. c.) P. L. reading 8.9 and at 6.50 Morro bore (on quarter) SW. (p. s. c.) reading 19.5,

Morro distant 15 miles at 6.50. Then changed course to south (p. s. c.) and ran 3 miles and stopped engines, and headed away from the land NEE. (p. s. c.). At 6.45 made out a sail ahead standing to the westward. At 7.45 sighted a two-masted steamer to the westward, which was headed in for the port of San Juan de Porto Rico. At 7.50 headed for steamer. On course west (p. s. c.) P. L. 22.5 and at 8.00 W. ½ S. P. L. 23.3 going ahead at full speed as steamer was drawing into port. The steamer had a red and black funnel.

(Signed) W. R. A. Rooney, *Lieutenant, U. S. N.*,
For R. L. Russell, *Lieutenant, U. S. N.*

8 a. m. to meridian. partly clear & pleasant. Gentle breezes from E. by S. & ESE. Smooth sea. At 8.00 went ahead on course W. ½ S. and drawing in gradually with starboard helm in chase of steamer, which was ahead at first and drawing in shore, the steamer's heading being about for San Juan; this ship making 90 revolu-
376 tions at first and then with forced draught as fast as 16 knots. At 8.12 fired a 6″ shell across steamer's bows, range 10,000 metres; at 8.19 sounded to general quarters. At first shot steamer changed course and headed for this vessel. Sent an officer and boarded steamer when she came alongside. Made signal "J. W. International" to her at 8.05. At 8.45 received signal from boarding officer, "This is the 'Olinde Rodrigues.'" At 8.45 sent signal, "Does he acknowledge having been warned on July 5th?" and at 8.50, "Does he acknowledge steering for San Juan?" Received at 9.10, "No; he said he was steering for St. Thomas." Sent at 9.15, "What do his papers say as to destination?" and received reply, "Left Puerto Plata, San Domingo, at 6 a. m., July 15th, bound for St. Thomas; cargo coffee, tobacco, rum, cotton seeds, principally tobacco. From St. Thomas goes to Havre direct; papers all right; will search holds and storerooms; have examined holds and have not found anything contraband." At 9.45 received, "What are my instructions?" and replied, "Order him to remain where he is and come on board to report." At 11.14 sent, "Wait further communication from me by boat;" and at 11.25, "Send copy of order in boarding book. Captain of steamer wishes to send you a written protest." At 11.30 sent, "Send back boat;" received at 11.45, "Do you wish to send statement in accordance with section 4615, Exhibit B?" and at 11.50, "Boat brings message." Boarding Officer Lt. R. L. Russell returned on board at 9.50 and received instructions to proceed to Charleston with a prize crew as follows (see list.) Prize crew went on board at 11.30. Retreat for general quarters was sounded at 8.30. Sounded to quarters at 10.30 and exercised at aiming and sighting drill. The bark which had been sighted in the morning watch stood down towards this vessel; made "International" signals to her as follows: At 10.40, B. C., at which she
377 showed Norwegian colors; at 11.05, B. N. G., and at 11.18, M. W. S., whereupon she hove to on starboard tack. Sent officer and boarded her.

(Signed) J. R. Y. Blakely, *Ensign.*

NOTE.—8 a. m. to meridian; at 9.00 ship's head NE. by N. Morro bore SW. $\frac{1}{8}$ S. East Pt. bore SE. $\frac{1}{8}$ E.	(P. S. C.) div. on NE. by N. $\frac{1}{8}$ Pt. W. or	ship's head NNE. $\frac{1}{8}$ E. Morro bore SW. $\frac{1}{4}$ S. East Pt. bore SE. $\frac{1}{4}$ E. magnetic.

Morro distant $7\frac{3}{4}$ miles from this ship.

(Signed) WM. R. A. ROONEY,
Lieutenant & Navigator.

Meridian to 4 p. m. clear and pleasant. Gentle breeze from east. Lt. W. F. Fullan returned, having boarded Norwegian bark "Elizabeth." The bark then proceeded on her course. At 11.20 received signal from Lt. Russell on board "Rodriguez:" "Have inventory of papers ready to send you. Can send papers if you want." At 1.05 signalled to the latter, "Have you secured the log book, and was that course on the log your first visit?" And at 1.15 received answer, "Have not received statement of commanding officer, according to Exhibit B, to accompany papers," and at 1.20, "Have received papers and will proceed." At 1.28 signalled the steamer, "Seal up all papers and proceed." At 1.35 hailed Lt. Russell on board the steamer and gave him the following verbal message: "Make a note of the fact that the steamer was steering between this vessel and a blockaded port." At 1.45 the "Olinde Rodriguez," a French mail steamer of the Compagnie Generale Transatlantique, in charge of Lt. Russell and prize crew, stood off to the Nd. & Wd. This vessel on blockading station to Nd. & Ed. of San Juan.

(Signed) F. A. TRENT, *Ensign.*

378 A true copy:

W. M. FOLGER,
Captain, U. S. N., Commanding.

Examined and found to be correct.

W. R. A. ROONEY,
Lieutenant and Navigator.

379 *Motion to release ship & for restitution.*—Filed 18 Nov., '98.

U. S. district court, district of South Carolina.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP "OLINDE RODRIGUEZ," HER engines, boilers, &c., whereof La Compagnie Generale Transatlantique is claimant.

And now, to wit, this 18th day of November, 1898, comes the above-named claimant and moves the court here for its order directing the absolute discharge and restitution of the above-named steamship, her engines, boilers, &c., on the following grounds, viz:

First, because there is no proof in the cause showing that the alleged blockade at San Juan, Porto Rico, was of the close and effective character required by the law of nations and the practice and declarations of

the Government of the United States to lawfully render and expose a neutral ship to capture and condemnation for attempting to enter or entering the said port; and

Second, because the proofs in the cause, taken as a whole, and as the record now stands, with all the evidence on the part of the United States, are insufficient in law to warrant or justify a decree of condemnation.

In making this motion the claimant hereby expressly reserves its right and privilege of adducing such further proof in its behalf as it may hereafter be advised, under the order of this honorable court already made, in the event that this motion shall be denied.

380 Dated Charleston, S. C., November 18th, 1898.

EUSTIS, JONES & GOVIN,
Proctors for Claimant.

381 *Opinion district judge.*—Filed 13 Dec., '98.

The United States of America, district of South Carolina. In the district court. In admiralty. In prize.

THE UNITED STATES
vs.
THE "OLINDE RODRIGUES." } Opinion.

BRAWLEY, district judge:

The French steamship "Olinde Rodrigues," a merchant vessel of 1675 tons, commanded by Maurice Pherivong, and belonging to the Compagnie Generale Transatlantique, is engaged in the West India trade and receives a subsidy from the French Government for carrying its mails upon an itinerary prescribed by its postal establishment. Her regular course is from Havre, France, to St. Thomas, San Juan, Puerto Plata, Cape Haytien, St. Marque, Port au Prince, Gonaise, and to return by the same ports to Havre. She sailed from Havre on June 16, 1898, arrived at St. Thomas July 3, and at San Juan, Puerto Rico, on the morning of July 5. Commander Emory, commanding the United States cruiser "Yosemite," formerly the merchant vessel "El Sud," on duty in those waters blockading the port of San Juan, was on that morning lying to the westward of Sabinas Point, which is about three miles southward and westward of San Juan, when he sighted the "Olinde Rodrigues" coming end on from the eastward towards the port of San Juan. He immediately made chase at full speed (about 16 knots an hour) but before reaching her she had turned in and was under the protection of the shore batteries, which extend for about 3 miles to the eastward of that
382 port. He lay outside beyond the range of the guns of the Morro until the next morning when he intercepted the "Olinde Rodrigues" as she came out and sent an officer aboard, who made this entry in her log, "Warned off San Juan July 5th, 1898, by U. S. S. 'Yosemite,' Commander Emory." Signed, John Burns, Ensign, U. S. N.

Pherivong, the master of the "Olinde Rodrigues," whose testimony was taken in preparatorio in proceeding for condemnation on a capture July 17th, charged with attempting to enter the port of San Juan on that day, testified that when he entered, on July 4, he had no knowledge that the port was blockaded, and that he first heard of it from the "Yosemite" on

July 5, when he was leaving San Juan; that "they had no conversation, because they could not understand one another, and therefore no conversation passed between them. He signified to him not to return to San Juan; that there would be six war vessels there." After this notification he continued his voyage on the itinerary above mentioned, arriving at Gonaise, her last port outward, on July 12. On his return voyage he stopped at the same ports, taking on freight, passengers, and mail for Havre. At Cape Haytien, on July 14, he received a telegram from the agent of his company at San Juan telling him to hasten his arrival there by one day in order that he might take fifty first-class passengers, to which he replied that the "'Olinde Rodrigues' will not touch at San Juan; will be at St. Thomas on 17th."

Pherivong further testified that on the outward voyage at each port he had warned the agent of the company and the postal department that he would not touch at Puerto Rico, and that he would not take passengers for that point, and that the letters would be returned to St. Thomas, and that having received his clearance papers at Puerto Plata at half past 5
383 o'clock on the evening of July 15, he did not leave until 6 o'clock in the morning of July 16, as he did not wish to find himself at night along the coast of Puerto Rico.

He was captured on the morning of July 17, between 8 and 9 o'clock, off the port of San Juan, by the U. S. cruiser "New Orleans," Captain Folger, and sent as prize of war to the port of Charleston, where proceedings for condemnation were instituted. The case was heard upon the testimony in preparatorio and the court was of opinion, for reasons stated, 89 Fed. Rep., 105, that there was not sufficient ground for condemnation; but upon motion of the district attorney, supported by affidavits of officers of the capturing vessel, an order allowing further proof was entered. To this order exception was taken by proctors for the claimant, but the court had no doubt then and has none now that such order is well supported by reason and authority. Subsequently thereto an order was entered for unloading the cargo, under the supervision of the prize commissioners, and, as it consisted wholly of products of the West Indies, was not contraband of war and was owned by neutrals, it has been released. There has been considerable delay in the taking of the additional testimony, owing to the absence from the country of the chief witnesses, but all the testimony in behalf of the captors is now in and the case is before the court upon a motion to discharge the vessel, proctors for the claimant reserving the right to introduce testimony hereafter if the motion is denied. Without passing upon the question, whether in a proceeding in admiralty, a party having an opportunity to offer testimony, failing to do so, may draw the opinion of the court upon his adversary's case and thereafter be permitted to reply to it, a question of practice which is at least doubtful as counsel were duly warned;
384 the court is of opinion that there is one aspect of this case which may possibly be decisive of it, and upon which no further testimony can be had, and therefore it becomes its duty at this stage to consider the motion.

The case has been argued orally and by permission of the court briefs have been submitted. The last one, filed December 19, contains some

citations from books to which access cannot be had without delay, but, as it is not conceived that they would throw any material light upon the questions involved which has not been received from other quarters, the court feels that, greatly as it desires enlightenment, the interests of justice demand a speedy decision, and with the constant comfort and consolation which comes from the knowledge that its errors may be corrected by a more enlightened tribunal it will now dispose of the case.

In determining a question of this nature the character of the ship and of its owners and all acts done from the commencement of the voyage are proper subjects of investigation. The case differs from that of the "Newfoundland," lately determined in this court, in that here the presence of the "Olinde Rodrigues" near the port of San Juan is not in anywise a suspicious circumstance. She was rightly there, for this port lay upon her regular route.

The time of the occurrences likewise marks an essential difference. Everything here occurred in the bright light of a summer day. The character of the cargo is different, consisting wholly of the products of Puerto Rico and other West India Islands. It is not even suggested that any of it was destined for that port, and there is a material difference in the character of the ship and of the owners. The ship is a large and valuable one, and she belongs to one of the largest steamship companies of the world engaged in a regular business and carrying the mails.

385 In this respect the case is sui generis. Ordinarily it is the owner or charterer of the vessel that, tempted by the large profits usually attending the venture, directs the enterprise which exposes his property to capture and confiscation, and though the law vests in the master of the ship powers which bind the owner in respect to the conduct of the ship, as much as if committed by the owner himself, a case will scarcely be found where a master without authority of his owners, has undertaken such a perilous enterprize, and it is not contended here and it is not conceivable that there was any authority from the owners of the ship to attempt a breach of the blockade. The character of the parties is also a circumstance entitled to be considered in determining the nature of any transaction. This court has had occasion during the last few months to examine nearly all the cases reported during this century involving breaches of blockade, and it does not recall one where a vessel commanded by a Frenchman has been condemned for this offence. Such ventures do not accord with the spirit of the race, for while there is in the French character a certain ebullience which makes for instability in government, leading to tempestuous and recurrent seasons of disorder and delation, no people are so orderly and methodical in the ordinary transactions of life.

Sir William Scott in the "Betsey," I Rob., 78, says, "on the question of blockade three things must be proved. 1st. The existence of an actual blockade. 2ndly. The knowledge of the party; and 3rdly, some act of violation, either by going in or by coming out with a cargo taken after the commencement of blockade.

The first point in order of time and first in importance to be determined is whether or not there was an actual blockade of the port of San Juan.

386 The purpose of the war with Spain, as declared by the joint

resolution of April 20, 1898, which led to it, was to relieve the "abhorrent conditions" which prevailed in the island of Cuba and to compel the Government of Spain to relinquish its authority and to withdraw its land and naval forces from that island, and there was an express disclaimer of any intention to exercise sovereignty, jurisdiction, or control over said island, except for the pacification thereof. The proclamation of the President of April 22 refers to this joint resolution and declares a blockade of certain ports of the island of Cuba for "carrying into effect said resolution."

There was apparently no purpose at that time to undertake the conquest of the island of Puerto Rico, and nothing that would indicate to neutral nations that the ordinary commerce with that island would be interfered with. The naval forces of the United States which appeared off San Juan in the month of May were sent for the purpose of intercepting the squadron of Admiral Cervera, then supposed to be making its way to that port. That purpose failing, Admiral Sampson returned with his fleet to Cuban waters, and the U. S. cruiser "St. Paul" was left in the neighborhood of Puerto Rico. On June 27 another proclamation was issued declaring the purpose of extending the blockade to certain other Cuban ports and to the port of San Juan. Captain Sigsbee, commanding the "St. Paul," was relieved by Commander Emory, commanding the U. S. cruiser "Yosemite," on June 25, and he, in turn, was relieved by Captain Folger, commanding the U. S. cruiser "New Orleans," on July 14. From the time of the departure of Admiral Sampson, about the middle of May, to July 17 only one ship of war was upon that station.

387 The proclamation of the President, dated April 26, declared the adherence of this Government to the rules of the Declaration of Paris, which, among others, provides that "Blockades in order to be binding must be effective."

The full text of this declaration, April 16, 1856, on this subject is in these words: "Blockades in order to be binding must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy."

This declaration promulgated no new principle of international law; the doctrine of paper blockades—that is to say, of blockades not sustained by any actual force or sustained by a notoriously inadequate force—which early in the century, under the stress of the Napoleonic wars, had a certain limited preference, never had been accepted by the civilized states as a sound principle, and in formulating an incontestable rule it did not altogether solve the difficulty.

As the precise question here is whether there was a blockade of San Juan, the court may find some assistance in etymology, which often aids to clear obscurities.

Dr. Johnson defines a blockade to be simply "To shut up by obstruction."

In the Imperial Dictionary it is thus defined: "The shutting up of a place by surrounding it with hostile troops or ships or by posting them at all the avenues to prevent escape and hinder supplies of provisions and ammunition from entering, with a view to compel a surrender by hunger and want without regular attacks."

The new English (Oxford) Dictionary gives this definition: "The shutting up of a place, blocking of a harbour, line of coast, fron-
388 tier, etc., by hostile forces or ships so as to stop ingress and egress and prevent the entrance of provisions and ammunition in order to compel a surrender from hunger or want without a regular attack."

In the American Encyclopedic Dictionary a blockade is thus defined: "The act of surrounding a town with a hostile army or, if it be on the seacoast, of placing a hostile army around its landward side and ships of war in front of its sea defenses; so as if possible to prevent supplies of food and ammunition from entering it by land or water."

If the purpose of proclaiming the blockade of San Juan was to bring pressure upon its inhabitants, by preventing supplies of provisions or ammunition from entering, it is difficult to understand how there could be any reasonable expectation of accomplishing such purpose so long as the ports of Ponce and all the other ports of the island were left open, there being no land forces to intercept communication.

What constitutes an "effective" blockade cannot be defined with absolute and rigorous precision. Some nations have endeavoured to define it by treaty. Russia and Denmark, in 1818, stipulated that two vessels should be stationed before every blockaded port. An earlier treaty between Holland and the two Sicilies prescribed that at least six ships of war shall be ranged at a distance slightly greater than gunshot from the entrance. A still earlier treaty between France and Denmark provided that the blockaded port should be closed by two vessels at least, or by a battery of guns on land. Among the continental nations the constant and uninterrupted presence of two or more vessels at the block-
389 aded port is considered necessary, and we find in the instructions given to the French naval officers during the war with Germany in 1870: "Si les forces navales Françaises etaient obligées par une circonstances quelconque de s'éloigner du point bloque les navires neutres reconnâitraient le droit de se rendre sur ce point." (If the French naval forces were obliged by any circumstance to remove from the blockaded point the neutral vessels would recognize the right to repair to this point.) And the blockade thus interrupted would have to be reestablished and notified anew under the prescribed forms.

There are no decisions of controlling weight upon the exact point. Sir William Scott, whose rigorous enforcement of the law of prize did not escape the censure of his contemporaries and the criticism of after ages, says, in the Juffrou Maria Schroeder (3 Rob., 128): "A blockade may be more or less rigorous either for the single purpose of watching the military operations of the enemy and preventing the egress of their fleet, as at Cadiz, or on a more extended scale, to cut off all access of neutral vessels to that interdicted place, which is strictly and properly a blockade, for the other is in truth no blockade at all so far as neutrals are concerned. It is an undoubted right of belligerents to impose such a blockade, though a severe right, and as such not to be extended by construction. It may operate as a grievance on neutrals, but it is one to which, by the law of nations, they are bound to submit. Being, however, a right of a severe nature, it is not to be aggravated by mere construction."

In the Mercurious (1 Rob., 69) he says: "For a blockade may exist without a public declaration, although a declaration unsupported by fact

will not be sufficient to establisht it." In the Henrik & Maria (1 Rob., 124) he says: "The sight of one vessel would not certainly be
390 sufficient notice of a blockade, and therefore it is necessary that it should be signified to me that there was a blockade de facto before that port."

In Vrouw Judith (1 Rob., 151), he defines a blockade to be "a sort of circumvallation, by which all correspondence and communication is, as far as human force can effect it, effectually cut off."

Mr. Marshall, Secretary of State, in a letter to Mr. King, September 20, 1800, (2 Am. St. Papers, 488), says: "Ports not effectually blockaded by a force capable of completely investing them have not yet been declared by the law of nations in a state of blockade." In the same letter, referring to occasional absences of the fleet when blown off by a storm from its station which it immediately resumes, he says: "I am persuaded that when a part of the fleet is applied, though only for a time, to other objects or comes into port, the very principle requiring an effective blockade—which is that the mischief can only be coextensive with the naval force of the belligerent—requires that during such temporary absence the commerce of neutrals to the place should be free."

Mr. Bayard, Secretary of State, in his letter to Mr. Becerra, April 9, 1885, reviews much of the diplomatic correspondence of the U. S. Government on this subject and says: "This Government, following the received tenets of international law, does not admit that a decree of a sovereign government closing certain national ports in the possession of foreign enemies or of insurgents has any international effect unless sustained by a blockading force sufficient to practically close such ports," and closes by referring to course of this Government at the beginning of this century, when, young in the family of sovereignties, at great cost of blood and treasure, it undertook wars against Great Britain and France to maintain the freedom of the seas and the invalidity of paper blockades.

391 Mr. Madison, Secretary of State, in his letter of 27 October, 1803, says "that the law of nations requires, to constitute a blockade, that there should be the presence and position of a force rendering access to the prohibited place manifestly difficult and dangerous."

Mr. Monroe, Secretary of State, in his letter to Mr. de Onis 20 March, 1816, says: "The force should be stationary and not a cruising squadron, and placed so near the entrance of the harbor or mouth of the river as to make it evidently dangerous for a vessel to enter."

Sir Roundell Palmer, solicitor-general, in a speech in the House of Commons, 7 March, 1862, discussing the sufficiency of a blockade, says: "You can not a priori lay down what particular number of frigates or other ships of war shall be an adequate force in any hypothetical case. The improvements in modern warfare, the introduction of steam or any other similar change may have made sufficient or insufficient now means of blockade which were not so before. What from the beginning of this century has been laid down as the test in this matter? Why, in the first place, that of evident danger."

The above is a fair epitome of the opinions of statesmen. Next will be considered the views of text writers.

Mr. Hall, the latest writer on international law, says (p. 726, Oxford edition, 1895): "It is impossible to fix with any accuracy the amount

of danger in entry which is necessary to preserve the validity of a blockade. It is for the prize courts of the belligerent country to decide whether in a given instance a vessel captured for its breach had reason to suppose it to be nonexistent."

Woolsey (International Law, p. 315), says: "A valid or lawful blockade requires the actual presence of a sufficient force of the enemy's ves-
392 sels before a certain place on the coast. * * * What a sufficient force is cannot be determined with logical rigor. It may be said to be such a force as will involve a vessel attempting to pass the line of blockade in considerable danger of being taken." * * * "It results from this that all paper or cabinet blockades, whether declarations of an intention to blockade a place without sending an adequate force thither * * * are an undue stretch of belligerent rights and of no validity whatever."

Manning, Law of Nations, p. 403, London, 1875: "The rule is explicit that the actual existence of blockade is necessary to involve the penalties of breach of blockade. A declaration of blockade, unaccompanied by the fact of blockade, does not establish a blockade. It was so determined by our lords of appeal, in the war with Napoleon I. Admiral Jervis declared the West India Islands in a state of blockade, but the lords held that, as the fact did not support the declaration, a blockade could not be deemed legally to exist."

Heffter, section 155, holds that "vessels should be permanently stationed and in sufficiently great number to prevent every kind of communication with the port or place invested."

Ortolan II, 328, thinks that there should be "permanent naval forces."

Hautefenille says that "there should be before the port a number of ships of war sufficient to command the approaches to it by their artillery."

Pistoye & Dwerdy, 1365, say that "the place should be invested by forces sufficient to render the entry to it perillous to the ships which might wish to enter there."

The rule adopted by the Institut de Droit International, Paris, 1883, Ann de l'Institut, p. 218, is that the blockade is to be con-
393 sidered effective "lorsqu'il existe un danger imminente pour l'entree ou la sortie du port bloque a cause d'un nombre suffisant de navires de guerre stationnes ou s'ecartent que mommentament de leur station." (When an imminent danger of ingress or egress of the blockaded port exists by reason of a sufficient number of war ships stationed or only temporarily leaving their station.)

M. Hall says that "the effect of the suggested rules would approach very nearly to the English practice."

Bluntschli, a writer of very high authority (Modern International Law, section 829), says: "A port is understood to be actually blockaded when ingress to and egress from it are prevented by vessels of war stationed off it, or by the land batteries of the blockading power."

It appears from this review of the writers and publicists that there is a general agreement among them that a blockade, to be effective, must be maintained by a number of vessels; that the danger of entry into the blockaded port must be evident and manifest. The words used to designate the blockading force are always "ships of war," "fleet," or "squadron." The peril to be encountered is always designated by such words as "manifestly," "evidently," "obviously."

They all speak of the "line of blockade." It is claimed, and it is obviously true, that a vessel of the speed and armament of the "New Orleans" is more effective than a fleet of frigates of the olden time; but it is also true that the facilities for eluding blockades are enhanced by the same steam power which enables those who wish to violate the law of blockade to keep pace with those whose duty it is to enforce it.

During the late war between the States the fact that a number of vessels succeeded in running the blockade at the port of Charleston
394 led to some correspondence between Lord Russell and Mr. Seward as to the effectiveness of the blockade; but upon its appearing that the blockade here was usually maintained by several ships of war, one of which lay off the bar between the two principal channels of entrance, while two or three cruised outside within signaling distance, the remonstrance was withdrawn. (Bernard, Chap. X and XII, Neutrality of Great Britain.)

Only two direct authorities have been cited as to the effectiveness of a blockade by one ship. The "Arthur" (1 Dodson, 425), in which Sir William Scott is reported as holding that a blockade was not effectual when it was attempted to be maintained by a single ship, and that to be effectual a blockade must be maintained "by stationing a number of ships and forming, as it were, an arch of circumvallation round the mouth of the prohibited port. Then if the arch fails in any one part the blockade fails altogether."

This volume is not in the library of the court, and the case has not been examined by it.

The case of the "Hallie Jackson" (11 Fed. Cases, p. 290), is cited to support the proposition "that there was, in fact, an effective blockade established at the port on the arrival of the brig, is demonstrated by her arrest there."

The facts as reported do not show whether there were one or more vessels blockading the port of Savannah when the vessel was captured. The grounds of condemnation are: 1st, that the vessel was enemy's property at the time of the seizure; 2ndly, because the vessel wilfully attempted to violate the blockade of the port of Savannah, with knowledge that such blockade existed, the court holding that a "neutral merchant becomes a participator with the enemy in any undertaking
395 or device to violate a blockade, and his property is thereby made to share a common fate with the enemy's itself.

It is probably such opinions as this that led Mr. Hall, a writer of very high authority, to say (International Law, p. 735, 4th edition): "During the American civil war the courts of the United States strained and denaturalized the principles of English blockade law to cover doctrines of unfortunate violence."

Whatever may be the true test of the effectiveness of a blockade, the fact that an isolated capture has been made can not be accepted as a true test, for if so the converse would follow, and the failure to capture would demonstrate its ineffectiveness. The learned proctor for the captors has forcibly argued that within less than three minutes the "Olinde Rodrigues" would have been under the guns of the batteries and would have escaped capture. The testimony shows that on July 4 she actually did evade the efforts of the "Yosemite" to overhaul her. Can it be con-

tended that the effectiveness of a blockade is to be determined by such accidents or incidents as these?

Mr. Madison, Secretary of State, in a letter to Mr. C. C. Pinckney, October 25, 1801, says that "mere liability by neutral vessels to capture by belligerent cruisers hovering around a coast can not constitute a blockade of a port on such coast."

If the fact of capture is the test of effectiveness, then every capture under a notified blockade would be legal, because the capture itself would be proof of the existence of a blockading force, a proposition which finds no support in reason or authority; its acceptance would nullify the very principle upon which rests the accepted doctrine requiring blockades to be effective, which is that the mischief to neutrals incident to all blockades, however their rigours may be softened,
396 shall only be coextensive with the naval forces of the belligerent which seeks to enforce them.

So long as war is unavoidable, and the indications of any change in human nature calculated to prevent it are feeble, if not deceptive, the efforts of all civilized countries is to contract as far as possible the range of its mischiefs and to mitigate the pressure which hostilities inevitably produce upon the commerce of neutrals. States have the right to go to war with each other, with or without reasonable cause, but the rest of mankind which desires to be at peace is entitled to be protected as far as possible from the inconvenience and injury which must necessarily result from it. Neutrals have the right to carry on commerce with either belligerent, and the interruption of that commerce is an act of force only justified by some necessity, real or imagined, which force must be exercised in the manner sanctioned by the law of nations. While that law recognizes the right of blockade, it insists that the blockade shall be a real one, for although a real blockade which shuts up a port may be a great hardship—and the more impassable the barrier the greater the hardship—yet a real blockade has limits; it can not range over an indefinite expanse, and it certainly would be limited by the naval power of the belligerent which proclaims it. If Admiral Sampson's fleet had by some great calamity been engulfed and Admiral Cervera's four swift cruisers had undertaken, under a proclamation of Spain, the blockade of four of our Atlantic ports, each of them, cruising near the entrance of a separate port, would doubtless have made captures—probably many of them. Would such captures have been proof that the blockades were effective?

Certain pregnant facts are substantially undisputed and certain conclusions are indisputable: (1) that the town of San Juan was not under
397 siege on July 17; the abortive bombardment of May 12, by Admiral Sampson's fleet can not be considered as an investment of that place, and its reduction and the conquest of the island of Puerto Rico not being one of the declared objects of the war with Spain, there was nothing to affect neutrals with notice that intercourse would be interfered with prior to the President's proclamation of June 27, and as this proclamation related only to one port it could not be inferred that it was the settled purpose of this Government to put an end to all communication with that island; (2) that the cruiser "St. Paul," a vessel of great speed, had been upon that station long before the proclamation of the blockade, and though not comparable in armament with the "New

Orleans," she was equally efficient for blockading purposes, and the "Yosemite" was but little less so, from which it is fairly deducible that the proclamation of the blockade did not induce the sending thither of any force to make it effective, and that the single cruiser upon that station, from a date long anterior to the proclamation, had other duties and was intended for other purposes than merely to maintain a blockade.

(3) That the "Olinde Rodrigues" arrived off the port in the daytime; that she had no cargo, passengers, or mail for San Juan; that there was nothing in her cargo which if landed would have found a market there or contributed in any way to the aid of the enemy; that all of the other ports of the island being open, escape through such ports would have been attended with less risk than from San Juan; that she could readily have reached that port under the cover of darkness; that no incriminating evidence was found aboard the ship in the shape of instructions to her master which indicated preparations for a breach of the blockade, from which the conclusion follows that any such attempt was the unadvised rashness of an individual and not an instructed and premeditated act.

398 (4) That there is no presumption that a respectable and responsible steamship company would entrust the control of a large and valuable steamship, and of its cargo, to a master likely to be guilty of the folly or fault, ignorance, or perverseness of attempting to break through the line of an actual and visible blockade in broad daylight, on a slow ship, involving the peril of its confiscation and the loss of his employment.

That all of the facts above stated create a strong presumption in favour of innocence can not be questioned, but it is equally true that presumptions can not be indulged in when directly contradicted by facts; that the motive which leads to the commission of an offence need not be proved when the intention to commit it is clearly established, and if it is conclusively shown that the conduct of the party leaves no doubt of his intention, he can not be acquitted because of lack of apparent or sufficient motive.

It is also a well-established principle of maritime law that as between master and owner any abuse of trust is to be settled between them; that the master is clothed with an authority which binds the owner; that any act committed by him in respect to the conduct of the ship is to be considered as the act of the owner, and it would be no defence against the penal consequences of an act to show that it was due to the folly of the master.

The court has now to determine the vital question whether this ship is to be condemned for its conduct on the morning of July 17. That perpetual temptation which assails the virtue of mankind, affecting its testimony by considerations of interest, prejudice, loyalty, or zeal, is nowhere more potent than among those "who go down to the sea in ships," and as is not unusual that there is a direct conflict in the evidence.

399 If it were essential to the decision of the case, the court would have no great difficulty in reaching a conclusion as to the preponderance of the testimony which is now before it, but as it will be decided on other grounds, which, if not sustained, may require a reexamination of the whole case and additional testimony may perhaps be offered, it

is not considered either proper or necessary to express any opinion upon that point.

The court is clearly of the opinion that when the "Olinde Rodrigues" sailed from Puerto Plata on the 16 July, there was no premeditated purpose to enter the port of San Juan. There is not a scintilla of testimony from which such purpose can be inferred, except the possession of a bill of health for San Juan. The failure to turn over this bill of health to the prize officer and its subsequent destruction was an act of great impropriety, and is made the subject of severe criticism on the part of the proctor for the captors. The spoliation of papers is always a circumstance of grave suspicion—it almost irresistably compels belief of guilty intention—and the universal rule is to presume the worst against one guilty of it, but with the explanation given, the court cannot say that standing alone as an incriminating circumstance it countervails all the other facts and presumptions in favour of innocence.

It is to be remembered that Pherivong testifies that when he left San Juan on July 5, he had reason to believe that the blockading force there would be largely increased and this with the circumstances already detailed and the absence of all other incriminating circumstances leads irresistibly to the conclusion that he had no intention of breaking the blockade at the inception of his voyage.

400 When he arrived off the port of San Juan on the morning of July 17, on his regular route to St. Thomas, what does he find? Is there a "line of blockade" making it "manifestly" dangerous to enter? Is there a blockading fleet? Are there a number of vessels sufficiently near to each other to make it probable that an attempt to enter would be perilous? Is there an arch of circumvallation around the port? Some or all of these conditions must exist to make a blockade effective and none of them are found. A single cruiser which, as appears from her log, was fifteen miles to the north and east of the Morro was the only ship of war upon that station, a ship of no great size but of powerful armament and of great speed. Is a neutral vessel, which prima facie has the right of access to a port, where for years she had been engaged in peaceful commerce, to be confiscated, if through an error of judgment her master concluded there was no effective blockade and attempted to go into the port? Under the law of prize the question of the effectiveness of a blockade cannot be left to the shifting judgments of those who, on one pretext or another, may seek to evade it, and condemnation must follow if it is decided that the blockade was effective.

A blockade in its true and primitive acceptation had nothing to do with confiscation of property; this practice had its birth in a barbarous and unenlightened age which clothed the courts of the captors' own country with invidious powers that would be better exercised by the independent tribunals of a disinterested state. Such a penalty, harsh to the verge of ferocity, should never be imposed in any doubtful case. It would be a degradation to an honourable service which requires no such stimulous to the performance of duty, if the courts of their

401 country should strain the law for the purpose of rewarding the captors with the spoil of neutrals.

Being of opinion that there was not an "effective blockade" of the port of San Juan within the spirit and intent of the law of nations and

that there would have been no attempt to enter if such blockade had existed, an order will be entered for the discharge of the vessel.

402 *Order releasing ship to owners.*—Filed Dec. 28, 1898.

At a stated term of the district court of the United States for the district of South Carlonia, held at the United States court-house in the city of Charleston on the day of December, 1898.

Present, Hon. William H. Brawley, district judge.

THE UNITED STATES OF AMERICA, LIBELLANT,
against
THE STEAMSHIP "OLINDE RODRIGUEZ," HER engines, etc., whereof La Compagnie Generale Transatlantique is claimant. } Prize.

A motion having been heretofore made and filed in behalf of the above-named claimant for an order to release and discharge the above-named steamship, "Olinde Rodriguez," on the grounds in said motion mentioned, and the said motion coming on for argument before the court, and after hearing counsel for the claimant in support of the said motion and the several counsel for the United States and the captors in opposition,

Now, upon consideration thereof, it is

Ordered and decreed, in conformity with the opinion herein filed, December 23rd, 1898, that the said motion be, and the same is hereby, granted, and the marshal of this court is hereby directed to forthwith release and discharge the said steamship "Olinde Rodriguez"
403 from his custody, and that the said steamship be restored to the claimant, and that the libel be dismissed.

WM. H. BRAWLEY, *U. S. Judge.*

28 Dec., 1898.

404 *Notice of appeal*—Filed Dec. 28, '98.

United States of America, eastern district of South Carolina, in admiralty.

THE UNITED STATES, LIBELLANT,
vs.
THE STEAMSHIP "OLINDE RODRIGUES," RESPONDENT.

SIR: Please take notice that the libellant herein hereby appeals from the final decree made and entered herein, on the 28th (twenty-eighth) day of December, 1898, in this cause, to the Supreme Court of the United States.

ABIAL LATHROP,
U. S. Attorney, Libellant's Proctor.

J. P. K. BRYAN,
Special Counsel for Captors.

Dated Charleston, S. C., December 28th, 1898.
To Messrs. Eustis, Jones, and Govin, proctors for respondent-claimant.
C. J. C. Hutson, clerk.

Acceptance of service.

Service of a copy of the within notice of appeal is hereby admitted.

EUSTIS, JONES & GOVIN,
Proctors for Claimant.

New York, Dec. 30, 1898.

405 *Petition of appeal*—Filed Jan. 7, '99.

The United States of America, eastern district South Carolina, district court. In admiralty.

THE UNITED STATES, LIBELLANT, APPELLANT,
against
THE STEAMSHIP "OLINDE RODRIGUES," LA COMPAGNIE Generale Transatlantique, claimant, respondent, appellee. } Prize.

Petition of appeal of the United States, by Abial Lathrop, district attorney of the United States for the district of South Carolina.

To the honorable WM. H. BRAWLEY, *judge of the district court of the United States for the eastern district of South Carolina:*

The United States, libellant herein, by Abial Lathrop, U. S. district attorney, presents and files this its petition for an appeal to the Supreme Court of the United States from the final decree rendered by the United States district court in the above-entitled cause, and filed 28th December, 1898, decreeing a restitution to claimant of said steamship "Olinde Rodrigues."

There is to be filed with the clerk of the court an assignment of errors to the said final decree, which set out separately and particularly each error asserted and intended to be urged.

ABIAL LATHROP,
United States Attorney, Proctor for Libellant Appellant.

J. P. K. BRYAN,
Counsel for Captors.

406 *Order allowing appeal.*—Filed Jan. 7, '99.

The United States of America, eastern district South Carolina, district court. In admiralty.

THE UNITED STATES, LIBELLANT, APPELLANT,
against
THE STEAMSHIP "OLINDE RODRIGUES," LA COMPAGNIE Generale Transatlantique, claimant, respondent, appellee.

Hearing the petition for appeal in the above-entitled cause to the Supreme Court of the United States, on motion of Abial Lathrop, district attorney of the United States for the district of South Carolina, on behalf of the United States, libellant, appellant,

It is ordered that said appeal be, and the same is, hereby allowed, and pending such appeal the execution of the decree of restitution, dated December 28th, 1898, be stayed.

WM. H. BRAWLEY,
U. S. Judge.

6 JANUARY, 1899.

407 *Assignments of error on appeal.*—Filed Jan. 7, 1899.

The United States of America, eastern district South Carolina, district court. In admiralty.

THE UNITED STATES, LIBELLANT,
against
THE STEAMSHIP "OLINDE RODRIGUES," LA COMPAGNIE GENERALE TRANSATLANTIQUE, claimant, respondent, appellee. } Prize.

Assignments of error on appeal.

I. The district court erred in decreeing a restitution of the steamship "Olinde Rodrigues" to the claimant on the ground that the blockade of San Juan was not an "effective blockade" on the 17th of July, 1898, at the time of the capture of the said steamship by the United States cruiser "New Orleans," while attempting to enter the port of San Juan.

II. The district court erred in not holding and decreeing that the blockade of San Juan on the 17th of July, 1898, was an effective blockade, and that the steamship "Olinde Rodriguez" was captured while attempting to break the blockade of San Juan on the 17th of July, 1898, and in not decreeing the condemnation of the steamship "Olinde Rodrigues" as a lawful prize of war.

III. The district court erred in finding "that the cruiser 'St. Paul,' a vessel of great speed, had been upon that station long before the proclamation of the blockade, and though not comparable in armament
408 with the 'New Orleans,' she was equally efficient for blockading purposes, and the 'Yosemite' was but little less so, from which it is fairly deducible that the proclamation of the blockade did not induce the sending thither of any force to make it effective, and that the single cruiser upon that station, from a date long anterior to the proclamation, had other duties and was intended for other purposes than merely to maintain a blockade."

IV. The district court erred in holding and finding that only "through an error of judgment the master of the 'Olinde Rodrigues' concluded that there was no effective blockade of the port [of San Juan] and attempted to go into the port" on the 17th of July, 1898.

V. The district court erred in holding "that there was not an effective blockade of the port of San Juan within the spirit and intent of the law of nations," on the 17th of July, 1898.

VI. The district court erred in holding "that there would have been no attempt to enter if such [effective] blockade had existed at San Juan."

VII. The district court erred in not holding that the blockade of San Juan, on the 17th of July, 1898, was an actual and effective blockade

within the meaning of the proclamation of the President of the United States, dated the 27th day of June, 1898.

VIII. The district court erred in not holding and finding specifically as fact that the actual capture of the steamship "Olinde Rodrigues" was made by the United States cruiser "New Orleans" on the 17th of July, 1898, while heading for San Juan and attempting to enter the
409 port of San Juan after being duly and actually notified of the blockade of San Juan and warned off the port of San Juan on the 5th of July, 1898, by entry in her log by the United States steamship "Yosemite," and after warning and signal to stop by the United States cruiser "New Orleans" on the morning of the 17th of July, 1898, and while defying and disobeying both such repeated warnings and signal.

IX. The district court erred in not holding that the fact of the capture of the steamship "Olinde Rodrigues," while attempting on the 17th of July, 1898, to enter San Juan, after warning on the 5th of July, 1898, by entry in her log by the United States ship "Yosemite," was a conclusive demonstration that the blockade of San Juan was an "effective blockade."

X. The district court erred in not holding that an "effective blockade" was a blockade practically effective, and that the actual capture of the steamship "Olinde Rodrigues," on the 17th of July, 1898, by the United States cruiser "New Orleans" while attempting to enter the port of San Juan, after having been warned off San Juan on the 5th of July, 1898, by the United States steamship "Yosemite," and after warning and signal to stop by the United States cruiser "New Orleans" on the morning of the 17th of July, 1898, and while disobeying and defying these repeated warnings and signal, was a demonstration that the blockade of San Juan was practically effective.

XI. The district court erred in holding that it was a matter of fact not "manifestly dangerous" for the "Olinde Rodrigues" to attempt to enter San Juan on the 17th of July, 1898, when she was captured by the United States cruiser "New Orleans," after a warning to the
410 steamship "Olinde Rodrigues" entered in her log by the United States steamship "Yosemite" on the 5th of July, 1898, and after the warning and signal to "heave to and stop" of the United States cruiser "New Orleans" on the morning of the 17th of July, 1898, both of which warnings and signal were disobeyed and defied by the steamship "Olinde Rodrigues," and, when disobeying and defying such repeated warnings, the "Olinde Rodrigues" was actually captured.

XII. The district court erred in holding that "a blockade fleet," "a number of vessels," "are of circumvallation"—some or all of these conditions must exist to make a blockade effective.

XIII. The district court erred in holding that one war ship of type, speed, armament, and range of guns of the United States cruiser "New Orleans"—that is, an armored, modern cruiser of 22-knot speed, 32 guns, and 6½-mile range of gun, shooting rifle shells—was not in fact an effective blockade of the port of San Juan, with its single entrance, on the 17th of July, 1898.

XIV. The district court erred in holding that it "requires, as matter of law, more than one modern war ship of the type, speed, armament, and range of guns of the United States cruiser "New Orleans"—that is, a

modern armored cruiser of 22 knots of speed, 32 guns, and 6½-mile range of guns shooting rifle shells—to blockade San Juan, a port of a single entrance."

VIOLATING THE BLOCKADE.

XV. The district court erred in holding "that the presence of the steamship 'Olinde Rodrigues' near the port of San Juan on the
411 17th of July, 1898, is not in anywise a suspicious circumstance. She was rightly there, for this port lay upon her regular route."

XVI. The district court erred in not holding that the steamship "Olinde Rodrigues," having been notified of the blockade and warned off San Juan on the 5th of July, 1898, by the entry in her log by the United States steamer "Yosemite," violated the blockade by her return to the port of San Juan on the 17th of July, 1898, and that her duty was not to go near the interdicted port of San Juan or be found in that neighborhood, or approach so near that she might slip or run in under the protection of the batteries; and that the claim that she was on her way to St. Thomas did not allow her to pass within the limits of the blockade station, or within the range or protection of the batteries of San Juan.

XVII. The district court erred in finding "that it is not conceivable here that there was any authority from the owners of the ship to attempt a breach of the blockade of San Juan on the 17th of July, 1898."

XVIII. The district court erred in holding "that no incriminating evidence was found aboard the ship in the shape of instructions to her master which induced preparations for a breach of the blockade, from which the conclusion follows that any such attempt was the unadvised rashness of an individual, and not an instructed and premeditated act."

XIX. The district court erred in holding and finding that when "the steamship 'Olinde Rodrigues' sailed from Puerto Plata on the 16th of July, 1898, there was no premeditated purpose to enter San Juan."

412 XX. The district court erred in holding and finding "there is not a scintilla of testimony from which such premeditated purpose to enter San Juan can be inferred, except the possession of a bill of health for San Juan."

XXI. The district court erred in not finding and holding that the master of the "Olinde Rodrigues" had, at the time of his capture by the United States cruiser "New Orleans," on the 17th of July, 1898, several bills of health and manifest for San Juan as a port of destination, and the instructions, expressed and implied, of the agents of the steamship company (owners of said steamship) at San Juan, Cape Haytien, Port au Prince, and other West India Island ports, to enter the port of San Juan after knowledge of the blockade and warning off San Juan of the 5th of July, 1898, duly entered in the log of the steamship "Olinde Rodrigues" by the United States "Yosemite," and that the intent and attempt to violate the blockade of San Juan was actual and the motive adequate at the time of the capture of the "Olinde Rodrigues" by the United States cruiser "New Orleans," on the morning of the 17th of July, 1898.

XXII. The district court erred in not finding and holding that the master and officers of the steamship "Olinde Rodrigues" refused to

deliver up all the ship's papers to the prize master, Lieutenant Russell, of the United States cruiser "New Orleans," upon his boarding her on the 17th of July, 1898, and particularly that they withheld and concealed the bills of health and manifest for San Juan as a port of destination and misrepresented to the said prize master that the papers delivered up to the prize master were all the ship's papers, and thereafter
413 that they destroyed the bills of health for San Juan so concealed before they were seen by the captors; and that in the first instance the said master, under oath, in his examination in preparatorio, denied the existence, concealment, and spoliation of such bills of health and manifest for San Juan.

XXIII. The district court erred in not holding, as matter of law, that the possession by the master of the "Olinde Rodrigues" of such ship's papers, bills of health and manifest, showing San Juan to be a port of destination; the refusal to surrender the same to the prize master on demand; the concealment of the same, and the spoliation of the same before they were seen by the captors, and denial of the same, and of their concealment and spoliation in the first instance, together with the other facts and circumstances in evidence in this cause, are conclusive of the intent of the steamshop "Olinde Rodrigues" to violate the blockade of San Juan on the 17th of July, 1898, and also that she sailed from her last port of departure with such intention.

XXIV. The district court erred in not holding that the steamship "Olinde Rodrigues," having been notified of the blockade of San Juan, and having been warned off the port of San Juan on the 5th of July, 1898, by entry in her log by the United States steamship "Yosemite," and thereafter, on 16 July, 1898, having sailed for the port of San Juan, with bills of health and manifest for San Juan, as a port of destination, violated the blockade of San Juan in so sailing with such intention of entering the port of San Juan.

XXV. The district court erred in not finding specifically that after notification of the blockade and warning off the port of San Juan
414 on the 5th July, 1898, by the United States steamer "Yosemite," the steamship "Olinde Rodrigues," on the 17th July, 1898, refused to obey the signal of the cruiser "New Orleans" to stop and heave to, and defiantly continued on her course while heading for San Juan, and turned only after solid shot was fired at her by the "New Orleans;" and the court further erred in not holding that such facts are conclusive of her guilt in attempting to violate the blockade of San Juan.

XXVI. The district court erred in not finding specifically that after notification of the blockade and warning off the port of San Juan, July 5th, 1898, by the United States steamship "Yosemite," the actual course of the "Olin'e Rodrigues" was carrying her under the batteries of San Juan at the time of her capture, 17th July, 1898, and that such fact is, as matter of law, conclusive of her guilt in attempting to violate the blockade of San Juan.

XXVII. The district court erred in not finding specifically that the "Olinde Rodrigues," after notification of the blockade and warning on 5th July, 1898, by the U. S. steamer "Yosemite," was, on the 17th July, 1898, at time of capture by the "New Orleans," running in under the protection of the batteries of San Juan, defying the warning and signals

to stop and heave to and drawing the cruiser "New Orleans" in pursuit of her, within the range of the San Juan, Morro, and shore batteries; and the district court erred in not holding as a matter of law that such fact raises a presumption de jure of her guilt in violating the blockade of San Juan and condemns her as a lawful prize of war.

XXVIII. The district court erred in not holding as a matter of law that the violation by the "Olinde Rodrigues" of the blockade
415 of San Juan on 17th July, 1898, after notification of the blockade and warning off the port of San Juan by the United States steamship "Yosemite," on 5th July, 1898, makes her liable to condemnation as a prize of war, equally, whether the owner or agent of the owners, instructed it, or whether the act was premeditated at the port of departure, or whether such act was that of the master alone under intention formed only at the time.

XXIX. The district court erred in not holding that "if through error of judgment the master of the 'Olinde Rodrigues' concluded that there was no effective blockade and attempted to go into port the 'Olinde Rodrigues' was still liable to condemnation as a prize of war for violating the blockade upon actual capture in such attempt by the United States cruiser 'New Orleans,' on the 17th July, 1898, after notification of such blockade and after warning off the port of San Juan on 5th July, 1898, by the United States steamship 'Yosemite.' "

XXX. The district erred in not decreeing the condemnation of the steamship "Olinde Rodrigues" as a prize of war, captured by the United States cruiser "New Orleans" for violating the blockade of San Juan on the 17th July, 1898, after notification and warning thereof on 5th July, 1898, by the United States steamship "Yosemite."

ABIAL LATHROP,
United States Attorney, Proctor for Libellant, Appellant.
J. P. K. BRYAN,
Counsel for Captors.

CHARLESTON, S. C., *Jan. 6, 1899.*

416 *Certificate of district judge.*—Filed Jan. 7, '99.

The United States of America, eastern district South Carolina, district court. In admiralty.

THE UNITED STATES, LIBELLANT, APPELLANT,
against
THE STEAMSHIP "OLINDE RODRIGUES" LA COMPAGNIE GENERALE TRANSATLANTIQUE, claimant respondent, appellee. } Appeal in prize.

Certificate of the district judge.

To the honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

I hereby certify that the appeal in the above-entitled cause is from a decree of the district court of the United States for the eastern district of South Carolina, in a cause of prize, and that the adjudication involves

a question of general importance, and that the matter in dispute exceeds in value the sum of five thousand dollars ($5,000), exclusive of costs.

WM. H. BRAWLEY, *U. S. Judge.*

6 JAN'Y, 1899.

417 *Citation.*—Filed Jan. 9, 1899.

United States of America, eastern district South Carolina, district court.
In admiralty.

THE UNITED STATES, LIBELLANT, APPELLANT,
against
THE STEAMSHIP "OLINDE RODRIGUES," LA COMPAGNIE GENERALE TRANSATLANTIQUE, claimant respondent, appellee. } Prize.

To Messrs. EUSTIS, JONES & GOVIN,
Proctors for Claimant Respondent, Appellee:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 4th day of February next, pursuant to an appeal filed in the clerk's office of the district court of the United States for the eastern district of South Carolina, in the fourth circuit, wherein the United States is appellant and the steamship "Olinde Rodrigues," La Compagnie Generale Transatlantique, claimant respondent, by you as appellee, to show cause, if any, why the decree rendered against said appellant, as in said appeal mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 6th day of January, A. D. 1899.

WM. H. BRAWLEY, *U. S. Judge.*

418 *Acceptance of service.*

Copy rec'd January 11th, 1899.

EUSTIS, JONES & GOVIN,
Procs. for "Olinde Rodrigues."

419 *Order to translate certain parts of testimony.*—Filed Jan. 13, 1899.

United States of America, eastern district South Carolina district court.
In admiralty.

THE UNITED STATES
vs.
THE STEAMSHIP "OLINDE RODRIGUES."

It appearing to the court that certain parts of the testimony and documentary evidence in this cause is in the French and Spanish languages, respectively, which are necessary to be translated for insertion in the record, under rule 11th of the Supreme Court on the appeal in this case

to the Supreme Court of the United States on motion of Abial Lathrop, district attorney of United States,

It is ordered that E. T. Viett, sworn interpreter of this court, do translate all such testimony and documents, papers in the French language, and that W. N. Marchant, sworn interpreter of this court, do translate all such testimony and documents and papers in the Spanish language, and that such translations be filed of record in this court, and that copy of such translations be certified by the clerk of this court, together with a copy of the original, in making up the record for the Supreme Court on appeal herein.

WM. H. BRAWLEY, *U. S. Judge.*

13 JAN'Y, 1899.

420 *Order to transmit record.*

And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Supreme Court, to be held at Washington on the 4th day of February, 1899, and the same is transmitted accordingly.

[SEAL.] CHARLES J. C. HUTSON,
Clerk U. S. D. Court South Carolina.

Certification.

UNITED STATES OF AMERICA,
Eastern district of South Carolina:

I, C. J. C. Hutson, clerk of the district court of the United States for the district of South Carolina, do certify that the foregoing is a full and true record of the proceedings and judgment of the said court in the therein entitled cause.

In testimony whereof I hereto set my hand and affix the seal of said court on this 2 day of Feb., 1899.

[SEAL.] CHARLES J. C. HUTSON,
Clerk U. S. D. Court South Carolina.

421 (Indorsement on cover:) File No. 17289. South Carolina D. C. U. S. Term No., 704. The United States, appellant, vs. The steamship "Olinde Rodrigues," La Compagnie Generale Transatlantique, claimant. Filed February 6th, 1899.

19571

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 704.

THE UNITED STATES, APPELLANT,

vs.

THE STEAMSHIP "OLINDE RODRIGUES," &c.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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1 In the Supreme Court of the United States, October term, 1898.

THE UNITED STATES, APPELLANT,
v.
THE STEAMER "OLINDE RODRIGUES," ETC. } No. 704.

STIPULATION FOR ADDITION TO RECORD.

It is hereby stipulated by counsel for the parties to the above-entitled cause that Exhibits A and B, hereto attached, shall be added to the printed record therein, the same having been inadvertently omitted from the transcript of the record filed.

HENRY M. HOYT,
Assistant Attorney-General.
E. K. JONES,
Counsel for Appellees.

2 EXHIBIT A (French).

Paquebot "Olinde Rodrigues," Cie. G'le Transatlantique.

EN MER, *le 17 juillet 1898.*

Monsieur L'AMBASSADEUR DE FRANCE,
Washington:

J'ai l'honneur de venir porter à notre connaissance les faits qui se sont passés pendant mon voyage intercolonial du 3 au 18 juillet.

Parti de Paulliac le 19 juin, je suis arrivé à Saint Thomas le 2 juillet à 1 heure du soir.

J'ai fait aussitôt câbler à San Juan de Porto Rico pour savoir si je pouvais y toucher.

Voici la réponse qui me fut transmise le lendemain:

"Consul France, aucune notification officielle blocus, croit paquebots doivent essayer suivre itinéraire, ne courent aucun danger."

Me fiant á cette dépêche, je partis le soir à 11.30 et fis ma route habituelle, donnant 59 tours de machine seul'ment.

Un jour, on signale un vapeur par tribord devant, loin; on le prit d'abord pour un allemand, puis pour un italien et lorsque nous fûmes plus près, on vit sa vergue de signaux; mais il ne nous en fit aucun, et ne mit même pas son pavillon de nation.

Je continuai ma route; nous voyant près de terre et sous les forts, ce navire reprit le large.

3 A 6.30 je pris le pilote, et j'enhai comme d'habitude. Mon départ eut bien le lendemain, mardi 5 juillet à 7h 30 du matin. 7h 45 ayant fait 1 mille ½ au nord, je donnai ma route au N. 70 E. 8h 10 le cruiser américain "Yosemite" me signala de stopper; je mets le cap sur lui et hisse l'aperçu. 8h 50, signal d'approcher. 9h de stopper. A 9h 10 un canot accoste à babord et deux officiers montent à bord. Après de nombreuses questions, ils *its* me notifient le blocus de Saint Jean; me préviennent qu'au retour, il y aura six navires et que je ne pourrai pas entrer. 9h 40 ils partent. J'échange le salut avec le croiseur et à 10 heures je reprends ma route.

Dans chaque escale, j'ai prévenu l'Agence et la Toste que je ne prendrais pas de passagers pour Porto Rico, n'y touchant pas au retour, et que je remettrais les letters au Consul d'Espagne à St. Thomas.

Revenu au Cap Haïtien le 14 juillet, on me remit dès mon arrivée la dépêche suivante:

"Saint Jean Rico.

"Nous avons cinquante passagers de chambre pour "Olinde," il conviendrait d'avancer d'un jour son arrivée ici."

Je câblai aussitot:

"Daim, ne touchera pas à Saint Jean, sera 17 soir, Saint Thomas."

Le 15 à Puerto Plata, je fis faire l'expédition du navire pour Saint Thomas et ne voulus pas prendre de patente de Sante Espagnole. Je suis directement parti de ce port le samedi 16 juillet à 5^h 30 du matin. 9^h 30 étant par le travers du vieux Cap Français à deux milles je donnai la route au S. 73 E. A 2^h 20 du soir, travers de la pointe Samana à 11 milles.

4 Dimanche 17 à 1^h 20 du matin, un point observé nous mettait par (19°09′ latitude nord, 69°40′ longitude ouest), je rectifiai la route au S. 69 E. A 4 heures 30 un nouveau point me donnai (18°53 latitude nord, 69°02 longitude ouest). Au jour on voyait à peine les hautes terres de Porto Rico qui étaient embrumées.

Tout le monde était à son poste et veillait.

J'était à 8 heures du matin par le travers du Morro, au large à 9 milles, et à quatre milles dans l'est du port, continuant tranquillement ma route, lorsque l'on vit près au large, sous le soleil, un vapeur. Peu après nous reconnaissions un croiseur américain.

Je fis mettre les pavillons et me dirigeai sur lui. Il tira un coup de canon, signala de stopper; je fus assez longtemps à voir son signal à cause de la distance et du soleil, me doutant de ce qu'il voulait, je mis l'aperçu et stoppai. Nous étions alors par (18°38′ de latitude nord, et 68°22′30″ de longitude ouest). Calme, beau temps, la terre toujours un peu embrumée.

Ce croiseur étaitle "New Orleans;" il envoie une embarcation commandée par un lieutenant qui monte à bord, nous demande d'où nous venions, où nous allions, et communication de tous les papiers. A 10 heures, après avoir pris beaucoup de notes et fait ouvrir les cales, il retourne au cuirasse et en revient avec deux embarcations portant des marins et des soldats armés.

Il me notifié que son commandant disait que je voulait entrer à Saint Jean, et de me rendre à Charleston (Caroline du Sud).

J'envoie aussitôt la lettre suivante:

"Monsieur le Commandant du Croiseur Américain 'New Orleans:'

5 "L'officier que vous venez d'envoyer à bord me donne l'ordre de me rendre à Charleston.

"Je viens protester de la façon la plus formelle contre cet ordre arbitraire n'ayant rien fait pour l'encourir.

"Le mardi 5 juillet le croisseur "Yosemite," à ma sortie de Porto Rico, m'a signifié le blocus de Saint Jean.

"Le 14 juillet étant au Cap Haïtien, j'ai télégraphié dans ce port que je n'y toucherais pas en revenant.

"Je suis parti de Puerto Plata le samedi 16 juillet à 6 heures du matin, expédié pour Saint Thomas à 2h 20 du soir j'étais par le travers de Samana à 11 milles. Là j'ai donné ma route pour venir chercher directement la Canal de la Culebra.

"A 8 heures du matin j'étais par le travers du Morro, à 9 milles continuant ma route, lorsque l'on vous a signalé par babord près que j'ai vu des pavillons, sans pouvoir en distinguer la couleur et avant même d'avoir entendre votre coup de canon, j'ai fait mettre le cap sur notre navire me conformant à toutes vos instructions.

"Je viens donc, Monsieur le Commandant, protester de nouveau contre votre décision, vous assurant en tout honneur qu'il n'y a aucune contrabande à mon bord, et que je n'ai point cherche à entre' à Saint Jean.

"Veuillez agreer, etc."

Je reçus cette réponse:

Monsieur le CAPITAINE:

"Je regrette de vous tant incommoder, mais à notre idée vous vous dirigiez sur Saint Jean.

6 "J'acuse réception de votre protest, et j'ai l'honneur d'être votre serviteur avec tous les souhaits pour un bon voyage.

"FOLGER, *Cd. U. S. N.*"

Le Lieutenant M. Russell, qui reste à bord, se fait appeler tous les connaissments qu'il prendre ainsi que l'ack de francisation, le journal du bord, celui des officiers, les patentes, le congé, le rôle; il en donne reçu au commissaire et met le tout sous scellis.

Je fais dire que je ne connais pas Charleston, que n'ayant rien à bord comme renseign'ments, que l'on me donne une carte, un plan particulier et un livre d'instructions.

Le commandant m'envoie un vieux routier et me dit qu'il n'a pas autre chose, que je trouverai un pilote.

Enfin a 1h 20 du soir, le croiseur passe près de nous, et le commandant, de vive voix, donne à son lieutenant l'ordre de partir.

On nous expédie comme des pirates, nous avons 6 matelots et 10 soldats armés, sous les ordres du Lieutenant Russell et d'un cadet. Nuit et jour un matelot armé veille le compas sur la passerelle; un soldat, le fusil sur l'épaule, se promène sur le pont de chaque côté, il en est de même dans les couloirs.

Il n'est pas permis de traiter ainsi un navire postal qui a agi de bonne foi. Sur mon honneur de Français et de marin je jure que je n'ai jamais cherché à entrer à St. Jean.

Aussi je viens au nom du droit des neutres et au nom de la Compagnie Générale Transatlantique lésée, demander justice.

7 Veuillez agreer, Monsieur l'Ambassadeur, l'expression de mes sentiments le' plus respect'eux et les plus dévoués.

PHERIVONG M'CE.

8 (Copy.)

A.—*Pherivong Maurice.*

Steamboat "Olinde Rodrigues," Transatlantic Steamship Company.

AT SEA—*17th of July, 1898.*

Mr. the AMBASSADOR OF FRANCE,
Washington:

I have the honor of bringing to your knowledge the facts which transpired during my journey intercolonial, from the 3d to the 18th of July.

Having left Panillic on the 19th of June, I arrived at St. Thomas the 2d of July at 1 p. m.

I cabled immediately to San Juan of Porto Rico in order to know whether I could land there.

Here is the answer which was transmitted to me the next day:

"Consul of France; no official notification blockade, think steamships must try to follow itinerary, run no risk."

Trusting to this dispatch, I left at 11.30 in the evening and made my habitual route, giving only 59 turns to the machine.

9 At daylight, one signalizes a steamer starboard, ahead, far off; at first she was taken for a German one, then for an Italian, and, when we were nearer, one saw her signal yard, but she gave us no signal whatsoever, and did not even display her national flag.

I pursued our course; seeing ourselves near land and under the forts, this steamer went again in the offing.

At 6.30 I took the pilot and entered as usual.

My departure took place the next day, Tuesday, 5th of July, at 7.30 in the morning; 7.45 having done one mile and ½ to the north, I made route to the N. 70°—8.10 the American cruiser "Yosemite" signalled me to stop; I went towards it and hoist the "perceived"—8.50, signal to approach—9, to stop—at 9.10 a boat comes larboard side and two officers come on board. After numerous questions, they inform me of the blockade of St. John, warn me that on the return there will be six steamers and that I will not be able to enter—9.40 they leave, I exchange salute with the cruiser, and at 10 o'clock I continue my course.

At each stay I warned the agency and the post I would not take any passengers for Porto Rico, not landing there on my return and that I would remit the letters to the Spanish consul at St. Thomas.

On my return to the Cape Haitien, the 14th of July, they handed to me, no sooner had I arrived, the following dispatch:

"St. John-Rico, we have fifty cabin passengers for "Olinde," it would be necessary for her to come a day sooner."

10 I immediately cabled back:

"Dairn, will not land at St. Juan; will be by the 17th in the evening at St. Thomas."

On the 15th, at Puerto Plata, I dispatched the vessel for St. Thomas, and would not take any Spanish health patent. I left directly from that port, the Saturday, 16 July, at 5.30 in the morning. 9.30 being athwart of the old French cap' at two miles I roaded to the south 73 east. At 20 m. past 2 p. m. athwart by eleven miles of the promontory of Samana.

Sunday, 17th, at 1.20 a. m., a clew noticed put us by (19° 09″ latitude north, 69° 40″ longitude west). I rectified the course to the south 69 east. At 4.30 a new clew observed put us by (18° 53′ latitude north, 69° 02 longitude west). By daylight one scarcely saw the high lands of Porto Rico, which were foggy. Every one was at his post and watching.

I was by 8 o'clock in the morning athwart of the Morrow, nine miles in the offing, and at four miles east from the port, pursuing quietly my route, when one saw far in the offing, under the sun, a steamer. Shortly after we recognized an American cruiser.

I hoisted the flags and went towards her. She fired, signalled
11 to stop. I was sometime before seeing her signal, on account of the distance and of the sun. Suspecting what she wanted, I hoisted the "perceived" and stopped. We were then by (18° 38′ of latitude north and 68° 22′ 30″ of longitude west). Calm, beautiful weather, the land always somewhat foggy.

The cruiser was the "New Orleans." She sends a craft commanded by a lieutenant, who comes on deck, asks us where we come from, where we were going, and communication of all the papers. At 10, after having taken many notes and caused the holds to be opened, he returns to the cruiser and returns with two crafts bearing sailors and armed soldiers.

He notifies me that his commander said that I wanted to enter St. Juan, and to render myself to Charleston (South Carolina).

I immediately send the following letter:

Mr. the Commander of the American Cruiser "New Orleans:"

"The officer whom you have just sent on board gives me the order to go to Charleston.

"I come to protest in the most formal manner against this arbitrary order, having done nothing to incur it.

"On the Tuesday, 5th of July, the cruiser "Yosemite," as I was leaving Porto Rico, signified me the blockade of St. Juan.

"On the 14th day of July, being at the Cap Haitien, I tele-
12 graphed to that port that I would not land there on my return.

"I left Puerto-Plata the Saturday, 16th of July, at 6 in the morning, dispatched for St. Thomas; at 2.20 in the evening I was 11 miles athwart from Samana. There I gave my route in order to seek directly the 'Canal de la Culebra.'

"At 8 in the morning I was 9 miles athwart of the Morro pursuing my route, when one signalled to us by larboard.

"As soon as I saw flags, without being to see their color, and even before having heard your firing, I directed toward your vessel conforming to all your instructions.

"I come, therefore, Mr. the Commander, to protest anew against your decision, assuring you with all honor there is no illegal traffic on my deck and that I have not sought to enter St. Juan.

"Accept, etc."

I received this answer:

"Mr. the CAPTAIN:

"I regret putting you to so much inconvenience, but according to us you were going to St. Juan.

"I acknowledge receipt of your protest and I have the honor of being you servant with all wishes for a good journey.

(Signed) "FOLGER, *Cpt., U. S. N.*"

13 The lieutenant, Mr. Russel, who remains on board, causes all the bills of lading to be called out to him which he takes, likewise the acts of gallicizing, the log-book of the board, that of the officers, the licenses, the pass, the roll; he gives receipt of all to the commissary and puts all under seal.

I send word that I do not know Charleston, that having nothing on board in the shape of information, that one gives me a map, a special plan and a book of instruction.

The commander sends me an old road map, saying he has nothing else; that I will find a pilot.

Finally at 1.20 p. m. the cruiser passes near us and the commander, aloud, gives his lieutenant the order to leave.

They dispatch us like pirates. We have six sailors and ten armed soldiers under the orders of Lieutenant Russel and 1 cadet. Night and day an armed sailor watches the compass on the upper deck; a soldier with his gun on the shoulder walks up and down the deck and likewise in the passages. It is not allowed to thus treat a postal steamer which has acted in good faith. Upon my honor as Frenchman and sailor, I swear I have never entered, sought to enter St. Jean. Therefore, I came in behalf of the neutral and in the name of the "Cie. Gen'le Transalantique" offended, to ask for justice.

Kindly accept, Mr. the Ambassadeur, the expression of my most respectful and most devoted feelings.

PHÉRIVONG MCE.

E. T. VIETT, *Sworn Interpreter.*

14 Ex. B (French).

(Copie—B Pherivong M'ce.)

Nous soussigné, passagers de "l'Olinde Rodrigues," embarqué à Port-au-Prince, au Cap Haïtien et à Puerto Plata, certifions en toute vérité que le Commandant Pherivong a déclaré dans ces trois ports qu'il ne touchait pas à St. Jean de Porto Rico, et qu'il ne recevait aucun passager ni paquet pour ce dernier port.

Le 15 juillet, dans la rade de Puerto Plata, le départ de "l'Olinde Rodrigues" fut affiché comme suit: "Départ pour Saint Thomas à 5 heures du soir."

Comme après six heures du soir le paquebot n'avait pas levé l'ancre, quelques passagers demandèrent au commandant si on ne partait pas; il répondit qu'il voulait avoir son expédition dans la soirée du 15; mais qu'il ne parterai' que dans la matinée du 16, afin de passer devant Saint Jean en plein jour, et d'éviter ainsi tout malentendu avec les croiseurs américains; effectuant le blocus de ce port, dont la notification lui avait été faite à son aller à Port-au-Prince.

Nous sortions en effet de la rade de Puerto Plata le 16 juillet vers les 6 heures du matin, en faisant cap à l'est, une fois dans la grande mer cette

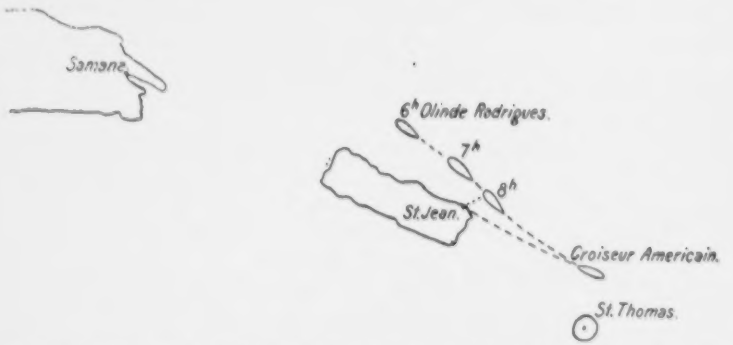
direction fut suivi toute la journée, avec une légère inclination au sud, vers la fin du jour où nous étions à peu près à la hauteur du Vieux Cap Français.

Le 17 juillet, vers 6 heures du matin, nous étions en vue de Saint Jean, à la distance d'environ dix milles ouest; ouest nord ouest.

Au moment du premier déjeuner vers 7 heures du matin, nous
15 étions en face des fortifications de St. Jean toujours à la même distance de neuf à dix milles, mais au nord juste; à 8 heures du matin nous étions à nord est de Saint Jean et nous allions entrer dans le canal entre Porto Rico et le groupe d'îles où se trouve St. Thomas, quand nous aperçûmes la fumée d'un steamer vers la direction est.

"L'Olinde Rodrigues" continuait sa route vers le canal, c'est-à-dire dans l'inclination est sud est, quand le steamer aperçu, quit était un croiseur américain, tira un coup de canon dont le projectile vint tomber à deux ou trois cents mètres à l'avant du paquebot.

Afin de préciser autant que possible la situation, nous la représenterons par le scheme suivant:



Ainsi, le croiseur américain était placé au sommet d'un angle très aigu d'un triangle dont la base était Saint Jean et l'autre "l'Olinde Rodrigues." On a du voir le paquebot à babord, et comme on n'a sans doute pas mesuré les côtes du triangle on s'est jurement arrêté à l'imago visuelle, dont l'apparence montrait le paquebot se dirigeant au sud sans laisser distinguer si c'était en face de Saint Jean ou si c'était au delà, comme de realité.

16 Le coup de canon étant tiré, "l'Olinde Rodrigues" tourna à babord en se dirigeant vers le croiseur américain qui marchait aussi vers nous. Il était environ huit heure et demie quand un canot du croiseur américain, commandé par un lieutenant de vaisseau, aborde "l'Olinde Rodrigues." Il réclame les papiers du bord qui furent soumis à son examen et dont il prit note, il fit ouvrir les écoutilles en exerçant complètement son droit de visite.

Enfin, vers les 11 heures du matin le canot retournait à bord du croiseur américain.

On croyait que tout était dit, aucune contrebande de guerre, aucun papier compromettant n'ayant été trouvé à bord quand le Commandant Pherivong ordonne de ne point relever l'échelle et annonça que le canot allait revenir.

Il revint en effet, accompagné de deux autres, avec une quantité d'hommes armés, et nous ne fûmes pas peu surpris d'apprendre que le commandant du croiseur américain avait décidé de nous faire conduire à Charleston, le port des Etats-Unis le plus rapproché de nous, comme s'il serait agi d'une prise de guerre.

En notre âme et conscience nous protestons contre cette décision dont les raisons nous échappent étant donné.

(1) Que "l'Olinde Rodrigues" n'a à son bord aucun article pouvant être considéré comme contrebande de guerre par le *p*roit international vivant.

(2) Que "l'Olinde Rodrigues" ayant été arrêté à plus de neuf
17 milles des côtes de Puerto Rico, était dans la grande mer dont la liberté est un fait consacré par le *p*roit des gens, et non dans les eaux territoriales de Puerto Rico qui ne vont pas au delà de trois milles toujours d'après le droit international vivant.

(3) Que "l'Olinde Rodrigues," sortant de Puerto Plata et ayant probablement tiré sa ligne de la pointe nord de Samana vers la direction de St. Thomas à l'est, est venu à l'ouest de St. Jean de Porto Rico, où se trouve l'entrée de port de cette ville. Ourait en bien le temps d'y entr*er* si c'était dans l'intention du commandant, avant que le croiseur américain pût lui faire aucune injonction.

Aussi bien, nous rendrons, qui de droit responsable des disagréments morause et des dommages matéri*a*ls que nous subissons et que nous aurons à subir par cette déviation in*a*pinée de notre itinérance, après que nous pris des précautions de nous renseigner de façon à avoir toute sécurité à bord "d'Olinde Rodrigues."

Fait, signé, et remis au Commandant Phérivong ce jour, 18 juillet 1898.

Ont signé:

M. M. Père Picarda, préfet des Etudes au Séminaire de P. au P.; Père Julien du Séminaire, va faire son nonciat; L'Abbé Plessis, Curé de Missdamaire; M Faures, représentant de la Maison Anglade de Badaux;
M. Fimun avocat, ancien ministre des aff. étrangèr's de Hait; M.
18 Monerat, représentant de commerce; M. Ardreoch, négociant P. au P.; M. Altieri, négociant Cap Haïtien; M. de Lara, négocian' Donnrucarn.

19 (Copy.)

B.—*Phérivong Mee.*

We, the undersigned, passengers of the "Olinde Rodrigues," embarked at Port au Prince, at the Cap Haitien, and at Puerto Plata, certify, in all truth, that the Commander Phérivong has declared in these three ports that he was landing at St. Jean of Porto Rico, and that he received neither passenger nor package for this last port.

The 15th of July, in the port of Puerto Plata, the departure of the "Olinde Rodrigues" was thus placarded: "Departure for St. Thomas at 5 in the evening."

As after 6 in the evening the steamship had not weighed anchor, some passengers asked the commander whether one was not leaving. He answered that he wanted his expedition in the evening of the 15th, but that he would only leave in the morning of the 16th, in order to pass before St.

John in full daylight, and to thus avoid any misunderstanding with the American cruisers accomplishing the blockade of that port, notification of which had been made to him at his going to Port au Prince.

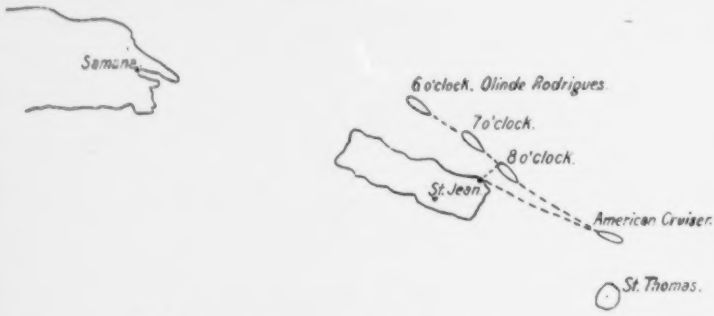
We were getting out, effectively, of the road of Puerto Plata
20 the 16th of July, towards 6 in the morning, going towards the east. Once in the main sea, this direction was followed the whole day long, with a slight inclination to the south, where towards the end of the day we were almost off the old French promontory (Vieux Cap Français).

On the 17th of July, towards six in the morning, we sighted St. John (St. Jean), at a distance of about ten miles west—west-northwest.

As the time of the first breakfast, towards 7 o'clock in the morning, we were facing the fortifications of St. Jean, always at the same distance of nine to ten miles, but just at the north; a' eight o'clock in the morning we were at the east-north-east of St. Jean, *et* we were going to enter the channel between Porto Rico and the group of islands where is situated St. Thomas, when we noticed the smoke of a steamer towards the direction east.

The "Olinde Rodrigues" was pursuing her course towards the channel—that is to say, in the inclination east-south-east—when the steamer noticed, which was an American cruiser, fired once, the missile falling two or three hundred yards from the prow of the steam packet.

21 In order to precise as near as possible the situation, we shall represent it by the following plan:



Thus, the American cruiser was placed at the summit of a very acute angle of a triangle, whose basis was St. Jean, and the other the "Olinde Rodrigues." One must have the steam packet larboard, and as, no doubt, one did not measure the sides of the triangle, one purely stopped at the visual picture, whose appearance showed the steamboat directing itself towards the south, without leaving to distinguish whether it was facing St. Jean or whether it was beyond, as, effectively, it was.

The cannon shot being fired, the "Olinde Rodrigues" turned larboard, directing itself towards the American cruiser, which was also coming towards us.

22 It was about eight and a half o'clock when an American craft, commanded by a lieutenant of the American cruiser, landed on the "Olinde Rodrigues." She claimed the papers on board, which were

submitted for her examination, and of which he took note. It caused the hatchways to be opened, exercising in full his right of visiting.

Finally, towards 11 o'clock in the morning, the craft was returning on board of the American cruiser.

On thought all was settled, no contraband of war, no compromising paper, having been found on board the "Olinde Rodrigues," when the Commander Phérivong gave orders to not take up the ladder, and announced that the craft was going to return.

It returned effectively, accompanied by two others, with a number of armed men, and we were no' slightly surprised to learn that the commander of the American cruiser had decided to have us led to Charleston, the United States port the nearest to us, as if it was question of a war capture.

In our soul and conscience we protest against this decision, of which the reasons fail to reach us, it being understood:

23 (1°) That the "Olinde Rodrigues" has on board no article being considered as contraband of war by the international existing law.

(2°) That the "Olinde Rodrigues" having been stopped at more than nine miles from the coast of Puerto Rico, was in the main sea, whose liberty is a fact sanctioned par the law of the people, and not in the territorial waters of Puerto Rico, which do not extend further than three miles, always according to the living international law.

(3°) That the "Olinde Rodrigues," coming out from Puerto Plata and having probably drawn her line from the point (promontory) north of Samana towards the direction of St. Thomas in the east, came at the west of St. Jean of Porto Rico, where is the entrance of the port of this town.

Would have well had the time of entering there, if it had been the intention of the commander before the American cruiser could have made him any injunction.

Therefore we render whosoever deserves it of the moral unpleasantness and of the material damages that we are undergoing and that we shall have to undergo by this unexpected deviation of our itinerary,

24 after we had taken precautions in order to find full security on board the "Olinde Rodrigues."

Done, signed, and delivered to the Commander Phérivong, this 18th day of July, 1898.

Have signed:

Gentlemen Father Picarda, prefect of the studies at the Seminary of Port au Prince; Father Julian, of the seminary, is going to make his noviceship; the "Abbé" Plessis, missionary curate; Mr. Fourés, representative of the House Anglade of Bordeaux; Mr. Firmin, lawyer, formerly minister of foreign affairs to Haiti; Mr. Monerat, representative of commerce; Mr. Andreoh, merchant, Port au Prince; Mr. Altiéri, merchant, Cap Haitien; Mr. de Lara, merchant, Donudurean.

E. T. VIETT, *Sworn Interpreter.*

25 (Indorsed on cover:) Case No. 17289. Supreme Court U. S., October term, 1898. Term No. 704. The United States, appt., *vs.* The Steamship "Olinde Rodrigues." Stipulation and addition to record. Filed April 1, 1899.

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In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
THE STEAMSHIP "OLINDE RODRIGUES," La Compagnie Générale Transatlantique, claimant.

No. 704.
In prize.

BRIEF FOR THE UNITED STATES AND THE CAPTORS.

STATEMENT OF CASE.

This is a libel by the United States against the steamship *Olinde Rodrigues* and cargo, in a prize cause for violation of the blockade of San Juan, Porto Rico, on the 17th day of July, 1898.

The steamship is claimed by La Compagnie Générale Transatlantique, a French corporation.

The steamship *Olinde Rodrigues* left Havre early in June, 1898, upon her regular voyage over a West Indian itinerary prescribed by the terms of her postal subvention from the French Government. The proclamation

of the President of the United States declaring San Juan, Porto Rico, in a state of blockade was on the 27th day of June, 1898. On the 3d of July, 1898, the *Olinde Rodrigues* arrived at St. Thomas, and on the next day, the 4th July, 1898, in the early morning, slipped into San Juan, Porto Rico, under the shore batteries. She was seen by the United States auxiliary cruiser *Yosemite*, then blockading the port of San Juan. On the 5th July, 1898, the *Olinde Rodrigues* came out of the port of San Juan, and, after continued signaling with the *Yosemite*, she approached the latter and claimed not to have any knowledge of the blockade of San Juan. Whereupon the boarding officer of the cruiser *Yosemite* entered in the log of the *Olinde Rodrigues* an official warning of the blockade and she went on her way to Puerto Plata and other ports of San Domingo and Haiti.

She returned from these ports, leaving Puerto Plata on the 16th July, 1898, and on the morning of the 17th of July, 1898, she was captured by the United States armored cruiser *New Orleans*, then blockading the port of San Juan, while she was attempting to enter the port of San Juan.

A prize crew was put aboard the *Olinde Rodrigues* and she was taken to Charleston, S. C., where she was libelled as a prize by the United States, and upon depositions taken *in preparatorio* the district court ordered the release of the cargo on the ground that the cargo owners did not appear to have any complicity in the running of the blockade, cargo being mainly West India products

shipped to Havre by innocent shippers; but as to the vessel, the court retained the cause and ordered further proof, and allowed the United States and claimants to put in other testimony as to violation of the blockade, which being done by the United States, the cause came on for hearing in December, 1898, on a motion by claimants to restore the steamship on the grounds:

(1) That the blockade of San Juan at the time of the capture of the *Olinde Rodrigues* was not an effective blockade and capture was illegal.

(2) That the *Olinde Rodrigues* was not violating the blockade when seized.

The district court rendered its decree December 13, 1898, holding that the blockade of San Juan was not an effective blockade, and "that there would have been no attempt to enter the port by the *Olinde Rodrigues* on the 17th of July, 1898, if the blockade had been effective," and ordered the restitution to claimants of the *Olinde Rodrigues*. The district court did not directly pass upon the question of violation of the blockade on the 17th of July, 1898, except impliedly by holding that "there would have been no attempt to enter if such effective blockade had existed at San Juan," thereby holding that there was an attempt to enter, which was held justifiable by the court on the ground of want of an effective blockade at the port of San Juan.

From the decree of restitution the United States appealed and assigns errors under two main heads:

(1) That the court erred in holding that there was no effective blockade of the port of San Juan, Porto Rico, on the 17th of July, 1898.

(2) That the court erred in not finding directly that the *Olinde Rodrigues* was captured while she was violating the blockade of San Juan on 17th July, 1898, and not decreeing condemnation of the said steamship as lawful prize.

The following assignments of errors, numbers from 15 to 30, fols. 411–415, set forth the position of the United States as to the questions of law and fact arising on the actual violation of the blockade of San Juan by the *Olinde Rodrigues* on the morning of the 17th of July, 1898.

VIOLATING THE BLOCKADE.

15. The district court erred in holding "that the presence of the steamship *Olinde Rodrigues* near the port of San Juan on the 17th of July, 1898, is not in anywise a suspicious circumstance. She was rightly there, for this port lay upon her regular route."

16. The district court erred in not holding that the steamship *Olinde Rodrigues*, having been notified of the blockade and warned off San Juan on the 5th July, 1898, by the entry in her log by the United States steamer *Yosemite*, violated the blockade by her return to the port of San Juan on the 17th of July, 1898, and that her duty was not to go near the interdicted port of San Juan, or be found in that neighborhood, or approach so near that she might slip in or run in under the protection of the batteries; and that the claim that she was on her way to St. Thomas did not allow her to pass within the limits of the blockade station, or within range or protection of the batteries of San Juan.

17. The district court erred in finding "that it is not conceivable here that there was any authority from the owners of the ship to attempt a breach of the blockade of San Juan on the 17th day of July, 1898."

18. The district court erred in holding "that no incriminating evidence was found aboard the ship in the shape of instructions to her master, which induced preparations for a breach of the blockade, from which the conclusion follows that any such attempt was the unadvised rashness of an individual and not an instructed and premeditated act."

19. The district court erred in holding and finding "that when the steamship *Olinde Rodrigues* sailed from Puerto Plata on the 16th of July, 1898, there was no premeditated purpose to enter San Juan."

20. The district court erred in holding and finding "there is not a scintilla of testimony from which such premeditated purpose to enter San Juan can be inferred, except the possession of a bill of health for San Juan."

21. The district court erred in not finding and holding that the master of the *Olinde Rodrigues* had, at the time of his capture by the United States cruiser *New Orleans*, on the 17th of July, 1898, several bills of health and manifest for San Juan, as a port of destination, and the instructions, expressed and implied, of the agents of the steamship company (owners of said steamship), at San Juan, Cape Haytien, Port au Prince, and other West India island ports, to enter the port of San Juan, after knowledge of the blockade and warning off San Juan on the 5th of July, 1898, duly entered in the log of the steamship *Olinde Rodrigues* by the United States

steamship *Yosemite*, and that the intent and attempt to violate the blockade of San Juan was actual and the motive adequate at the time of the capture of the *Olinde Rodrigues* by the United States cruiser *New Orleans* on the morning of the 17th of July, 1898.

22. The district court erred in not finding and holding that the master and officers of the steamship *Olinde Rodrigues* refused to deliver up all the ship's papers to the prize master, Lieutenant Russell, of the United States cruiser *New Orleans*, upon his boarding her on the 17th of July, 1898, and particularly that they withheld and concealed the bills of health and manifest for San Juan, as a port of destination, and misrepresented to the said prize master that the papers delivered up to the prize master were all the ship's papers, and, thereafter, that they destroyed the bills of health for San Juan so concealed before they were seen by the captors; and that in the first instance the said master, under oath, in his examination *in preparatorio* denied the existence, concealment, and spoliation of such bills of health and manifest for San Juan.

23. The district court erred in not holding as a matter of law that the possession by the master of the *Olinde Rodrigues* of such ship's papers, bills of health, and manifest, showing San Juan to be a port of destination; the refusal to surrender the same to the prize master on demand; the concealment of the same, and the spoliation of the same before they were seen by the captors, and denial of the same and of their concealment and spoliation in the first instance, together with the other facts and circumstances in evidence in this cause, are conclu-

sive of the intent of the steamship *Olinde Rodrigues* to violate the blockade of San Juan on the 17th of July, 1898, and also that she sailed from her last port of departure with such intention.

24. The district court erred in not holding that the steamship *Olinde Rodrigues*, having been notified of the blockade of San Juan, and having been warned off the port of San Juan on the 5th of July, 1898, by entry in her log by the U. S. S. *Yosemite*, and thereafter, on 16th of July, 1898, having sailed for the port of San Juan with bills of health and manifest for San Juan as a port of destination, violated the blockade of San Juan in so sailing with such intention of entering the port of San Juan.

25. The district court erred in not finding specifically that after notification of the blockade and warning off the port of San Juan on the 5th of July, 1898, by the United States steamer *Yosemite*, the steamship *Olinde Rodrigues*, on 17th of July, 1898, refused to obey the signal of the cruiser *New Orleans* to stop and heave to, and defiantly continued on her course while heading for San Juan, and turned only after solid shot was fired at her by the *New Orleans;* and the court further erred in not holding that such facts are conclusive of her guilt in attempting to violate the blockade of San Juan.

26. The district court erred in not finding specifically that after notification of the blockade and warning off the port of San Juan, July 5, 1898, by the United States steamship *Yosemite*, the actual course of the *Olinde Rodrigues* was carrying her under the batteries of San Juan at the time of her capture, on the 17th July, 1898,

and that such fact is, as matter of law, conclusive of her guilt in attempting to violate the blockade of San Juan.

27. The district court erred in not finding specifically that the *Olinde Rodrigues*, after notification of the blockade and warning on the 5th of July, 1898, by the United States steamer *Yosemite*, was, on the 17th July, 1898, at time of capture by the *New Orleans*, running in under the protection of the batteries of San Juan, defying the warning and signal to stop and heave to, and drawing the cruiser *New Orleans*, in pursuit of her, within the range of the San Juan Morro, and shore batteries; and the district court erred in not holding as matter of law that such fact raises a presumption de jure of her guilt in violating the blockade of San Juan and condemns her as a lawful prize of war.

28. The district court erred in not holding as a matter of law that the violation by the *Olinde Rodrigues* of the blockade of San Juan on 17th July, 1898, after notification of the blockade and warning off the port of San Juan by the U. S. S. *Yosemite* on 5th July, 1898, makes her liable to condemnation as a prize of war equally whether the owner or agent of the owners instructed it, or whether the act was premeditated at the port of departure, or whether such act was that of the master alone under an intention formed only at the time.

29. The district court erred in not holding that, "if through error of judgment the master of the *Olinde Rodrigues* concluded that there was no effective blockade and attempted to go into port," the *Olinde Rodrigues* was still liable to condemnation as a prize of war for

violating the blockade upon actual capture in such attempt by the United States cruiser *New Orleans* on the 17th July, 1898, after notification of such blockade and after warning off the port of San Juan on 5th July, 1898, by the United States steamship *Yosemite*.

30. The district court erred in not decreeing the condemnation of the steamship *Olinde Rodrigues* as a prize of war captured by the United States cruiser *New Orleans* for violating the blockade of San Juan on the 17th July, 1898, after notification and warning thereof on 5th July, 1898, by the U. S. S. *Yosemite*.

We submit the questions made by these sixteen assignments of error as to violation of the blockade in seven propositions, as follows:

ARGUMENT.

THE ACTUAL VIOLATION OF THE BLOCKADE OF SAN JUAN.

I.

THE INTENTION OF THE "OLINDE RODRIGUES" TO RUN THE BLOCKADE, AND THE FACT THAT SHE WAS VIOLATING BLOCKADE CLEARLY APPEAR FROM HER POSSESSION OF BILLS OF HEALTH AND MANIFEST FOR SAN JUAN, AND THEIR CONCEALMENT AND DESTRUCTION.

1. The intention to run the blockade is evidenced by having the bills of health for San Juan, obtained and delivered to the captain by the agents of the company at ports on the eastward voyage, after the warning entered

in the log of the *Olinde Rodrigues* by the United States steamer *Yosemite*, on the 5th of July, 1898, off San Juan.

2. By concealment of these bills of health by captain, on delivery of the ship's papers to prize master.

3. By the destruction of the bills of health by captain, without having been seen by the captors.

4. By the concealment, under fraudulent oath of the captain as to such papers, on the 2d of August, 1898, upon his first examination *in preparatorio*, when he denied such papers, or their concealment or destruction, swearing he delivered *all* papers to prize master.

5. By his attempted explanation of bills of health on the 5th of August, having denied them in the first instance on August 2 and only admitting them after he found the purser would swear, as he did on August 5, that the captain had told him to destroy them. (See date depositions of captain August 2, purser August 5, captain's explanation August 5, fol. 38, 40, 43, 80, 88.)*

6. By his stating in explanation that the bills of health from *last* port only counted, and that was the reason why he did not deliver to the prize master the Spanish bills of health. This statement is untrue on its face, for the several bills of health he did deliver to the prize master on French account, destination being *Havre;* and on Danish account, destination being *St. Thomas,* from the ports at which he touched going eastward, shew that *all* these several bills of health "*count*" and are all necessary to enter the respective ports. The rule and law of all the world is that the consul of each nation at the port

* The folio references are to the marginal paging in the record.

gives a bill of health to allow vessel to enter the port of destination of his nationality. See bills of health in evidence from the several *Danish* consuls for *St. Thomas*, and from the several *French* consuls for *Havre*. The bills of health from the several *Spanish* consuls for *San Juan* are destroyed.

Bills of health delivered to prize master.

Date.	Consul.	Place.	Destination.
July 9	French ...	From St. Marc, Haiti	"Au Havre avec escales."
July 11	.....do	From Gonaives, Haiti	None.
July 13	.....do	From Port au Prince, Haiti	Havre.
July 14	.....do ..	From Cape Haitien	Do.
July 15	.....do	From Puerto Plata	Do.
See Record, fol. 95–103.			
July 13	Danish ...	From Port au Prince.....	St. Thomas.
July 14	.....do	From Cape Haitien.....	Do.
July 15	.....do	From Puerto Plata	Do.
See Record, fol. 98–103.			

These consuls gave bills of health for ports of their own nationality.

On July 13, at Port au Prince, he took *Danish* bill of health expressly for St. Thomas, and *French* bill of health for *Havre*, because he was bound for *both places*.

In same way he also took *Spanish* bill of health expressly for *San Juan*.

These Spanish bills of health he has destroyed, because their *destination* was San Juan, thus leaving his apparent destination only St. Thomas and Havre.

If he had also destroyed the Danish bills of health his apparent destination would be *only* Havre.

The spoliation of papers is therefore directly on the very issue in this case, *destination* to San Juan, in order to conceal his destination expressed on ship papers. (See in full evidence bills of health delivered up to prize master, Record, fol. 95–107.)

BILLS OF HEALTH—EVIDENCE AS TO SAME.

The testimony fully confirms the position above stated. Captain Pherivong, of the *Olinde Rodrigues*, fol. 80, question 20, testifies on August 2:

> Papers were clearance, etc.; bills of health, etc. None of papers *concealed* or *destroyed by anyone.*

Idem, question 35:

> All his papers were perfectly true and regular. They were all true and correct. They were obtained from the *agent of the company* and the *various consuls;* they were obtained for this vessel only. * * * Does not know whether any fees were paid, but supposes some *fees were paid.*
>
> Made report to Washington; does not wish to tell; he will not tell you contents of the paper whatever; he has been deprived of his papers; will not tell contents of what he has written (fol. 82–83).

Darondeau (purser of *Olinde Rodrigues*), August 5, testifies:

> The prize officer asked for the papers of the steamer. I was at my table and brought him there to look at the papers. I gave him *all* the papers. He said: "Give me the papers." I then put the papers together and brought them in the saloon before the captain (fol. 32).
>
> Papers were given me by consignees of steamer at *Port au Prince*, at time of sailing. I found in

the box of papers one manifest of freight in ballast. As to bills of health that is not my matter, and I said to the captain "we don't want it," and he said "all right you *can tear it*," and I put it *away in the corner; and in Cape Haytien* it was the same thing absolutely to my recollection these clearance papers were given gratuitously. The captain told me we were not going to San Juan, and I did not care and put them in the office because I had no need of them. * * * I paid no more attention to these papers and *put them away in the corner* (fol. 37).

Night before arrival in Charleston [i. e., after capture] the doctor says to me, "I have a bill of health, *Spanish account*, from Cape Haytien and Port au Prince," and I told him I would speak to the captain and ask him what I should do with these papers that I found in assorting my papers, these papers in the pigeonholes. I told the captain that morning and he told me we had better destroy them because we don't want them; that it is not our expedition, and that a true exposition is valuable only for the last port to the Spanish port. I came into the stateroom of the doctor—he was yet asleep—and I asked him for his bills of health from Cape Haytien and Port au Prince, and I took them with mine and the balance of merchandise and I tore it and put it in my wastebasket. (Answer 17, fol. 38.)

I showed the boarding officer all the papers of the steamer excepting the papers about which I have spoken. (Answer 23, fol. 40.)

This testimony of the purser therefore shows that—

(*a*) All bills of health, Spanish account, destroyed.

(*b*) All clearances, Spanish account, destroyed.

(*c*) Captain said, after capture, better destroy them because not our expedition.

Captain Pherivong (fol. 87), master of the *Olinde Rodrigues*, having denied on *August 2* concealment and destruction of any papers, on *August 5*, date of purser's testimony, coming back as a witness, says:

> At Port au Prince and Cape Haitien our agents gave us bill of health and manifest of no cargo for Spanish ports.
>
> July 14, dispatch from *agent* at San Juan.
>
> We would have to take 50 passengers first class.
>
> From Puerto Plata my clearance was for St. Thomas. By their laws this last clearance from the last port was the only legal one.

The reason of retention of these papers, he says, is that "they did not form a part of the clearance of our ship for our itinerary and left in the pigeonhole where they were. I told the purser in Charleston good for nothing, and to tear them up" (fol. 88).

This reason is untrue, because *all* bills of health and manifests from *all* ports are part of papers and show destination, just as the other bills of health, French and Danish, show destination to St. Thomas and Havre, respectively.

Girny, head steward of the *Olinde Rodrigues*, testifies:

> Usual ship's papers delivered to prize master, none burned or destroyed; and best proof of their not being destroyed is that Mr. Russell, as soon as he came on board, took charge of them (fol. 58, 59).
>
> No papers exepting those delivered to prize master.
>
> The prize master has gotten *all* the papers (fol. 61).
>
> The papers *all signed* by *consuls* and obtained for this vessel only (fol. 61).

Landgren, first officer of the *Olinde Rodrigues*, testifies:

> All papers regular and in form; that is *the affair of the purser*. He receives all of these papers (fol. 66).
>
> All customary ship papers given to prize master. None were destroyed or concealed, as far as he knows (fol. 68).
>
> At time of capture the officer of *New Orleans* took *all* their papers (fol. 70).
>
> All papers regular. They were to go direct to St. Thomas. Obtained from consuls. Could only be used on *Olinde Rodrigues*, and not other vessel. The *consuls* gave them to the agent of the boat, and the agent gave them to the purser. Does not know if any fee paid; supposes the consuls got their fees. The ship in port when passports delivered to us (fol. 72).
>
> Papers perfectly correct when taken by Mr. Russell (fol. 73).

Lieutenant Russell, of the United States cruiser *New Orleans* (fol. 189), prize master, testifies:

> I went in saloon with captain and purser and demanded to see *all* the ship's papers; certain papers furnished me said to be *all* the ship's papers.

Upon such concealment, suppression, and spoliation of papers, and denial in *first instance* of such concealment and spoliation of papers, the legal principles are well established, as the following authorities shew:

In *Two Brothers* (1 Robinson, 131, 133–134), Sir William Scott says:

> Besides, the matter is entitled to less credit, from a circumstance which came out on the examination, "that he burnt some of the letters before capture."

These, it is said, were only the private letters of some women. Now, *no rule can be better known than that neutral masters are not at liberty to destroy papers.*

In all cases it must be considered as a proof of *mala fides;* and where that appears it is an universal rule to presume the worst against those who are convicted of it. It will always be supposed that such letters relate to the ship or cargo, and that it was of material consequence to some interests that they should be destroyed.

Besides, the fact does not come out, on the master's deposition, with great frankness. It is added by interlineations afterwards, when this circumstance had been disclosed by another witness whose credit had been attacked.

The mate also suppresses the circumstance, and it is one which he could not but know. It is a suppression which very much impeaches his credit also.

The case at bar is like this case—destruction denied by master at first, though confessed afterwards, only when he found that the steward would not perjure himself.

The case at bar is stronger than this case, because the bills of health and manifest destroyed contained the evidence of the destination of the steamer to San Juan, expressly appearing on their face—in the same way as *French* bills of health in evidence expressly shew *Havre* to be a port of destination, and *Danish* bills of health shew *St. Thomas* to be a port of destination. The *Spanish* bills of health shewed *San Juan* to be destination. This is destruction of the *certain* evidence of guilt—*destination.*

The destruction or "spoliation" of papers, and even, though to a less degree, their concealment, is

theoretically an offense of the most serious nature, the presumption being that it is effected for the purpose of fraudulently suppressing evidence, which, if produced, would cause condemnation. The French Regulations of 1704, repeated in 1744 and 1778, declared to be good prizes all vessels, with their cargoes, on simple proof of the fact that papers had been destroyed, irrespective of what the papere were; but the severity of the rule has been tempered in practice, it being commonly required that the destroyed papers hould be proved to be such as in themselves to entail confiscation. * * * If the circumstances are not clear; if, for example, spoliation takes place when the capturing vessel is in sight, or at the time of capture, or subsequently to it, without the destroyed papers having been seen by the captor, further proof would probably be shut out, as, of course, the natural inference from the circumstances being that they have been destroyed because their contents were compromising. (Hall's International Law, pages 760–761.)

Pistoye et Duverdy, ii, 73, citing the case of *La Fortune*. But in the case of the *Apollos* the rule was pressed with extreme rigor. A prize was wrecked at the entrance of the port of Ostend; at the moment when it grounded the captain snatched the ship's papers from the prize master, and on getting to shore at once lodged them with the *juge de paix*. They established the neutrality of the ship and cargo, and there was no reason to believe that any of the number had been abstracted, but it being possible that in the confusion some might have been destroyed, the penalty of proved destruction was inflicted. (Id., p, 761, note.)

In case at bar the purser's admission of *Spanish* bills of health makes their *destination San Juan*, and their

admitted destruction to conceal *destination* is a presumption that is natural and irrebuttable in this case.

In the *Andromeda* (2 Wall., 489–490) doubt was removed by spoliation of papers, and vessel *condemned* (see in full).

In the *Circassian* (2 Wall., 153) this court say:

> Finally it is proved that on the eve, and almost at the moment of capture, the captain ordered the destruction of a package of letters put on board the ship, after she had cleared from Bordeaux, at Pauillac, a town on the Gironde, nearer the sea. These letters doubtless related to the ship, the cargo, or the voyage; probably to all. Their destruction would be a strong circumstance against the ship and cargo were the other facts less convincing; taken in connection with them, it irresistibly compels belief of guilty intent at the time of sailing and time of capture.

In the case at bar not only were papers concealed and destroyed but falsified in the first affidavit. There was false denial until the purser testified.

In *The Adula* (89 F. R., 361) (1898), the court say directly upon the point:

> He made a complete schedule by name of the different papers, and swears that all of them were delivered, without suppression or fraud, to the prize commissioners. The dissappearance of the passport for the ship to any Spanish port, rather more than the passport itself, is therefore of great significance as affecting her character, and the production of a certified copy from the Spanish consul would not throw any light upon the controversy. Spoliation or destruction of a paper of this character is strong proof of guilt. (The *Pizarro*,

2 Wheat., 227; the *St. Lawrence*, 8 Cranch, 434; the *Fortuna*, 2 Wheat., 161, 3 Wheat., 236.)

In *the Adula* (89 F. R., 355) the court again say:

> Again we are assisted by the lucid announcement of Mr. Justice Story in the Pizarro, supra.
>
> "Nor should the captured crew have been permitted to be reexamined in court. They are bound to declare the whole truth upon the first examination; and, if they then fraudulently suppress any material facts, they ought not to be indulged with an opportunity to disclose what they please, or to give color to their former statements, after counsel has been taken, and they know the pressure of the cause. Public policy and justice equally point out the necessity of an inflexible adherence to this rule." * * *
>
> The allowance would hold out the strongest temptation to subornation of perjury.

The first examination of Captain Pherivong, denying the destruction of papers and fraudulently swearing to nonconcealment and nondestruction, is therefore final and condemns him utterly.

In *the Pizarro* (2 Wheaton, 227-241) this court has fixed the limit for explanations.

> Concealment, or even spoliation of papers, is not of itself a sufficient ground for condemnation in a prize court. It is, undoubtedly, a very awakening circumstance, calculated to excite the vigilance and justify the suspicions of the court. But it is a circumstance open to explanation, for it may have arisen from accident, necessity, or superior force; and if the party in the first instance fairly and frankly explains it to the satisfaction of the court, it deprives him of no right to which he is otherwise

> entitled. If, on the other hand, the spoliation be unexplained, or the explanation appear weak and futile; if the cause labor under heavy suspicions, or there be a vehement presumption of bad faith, or gross prevarication, it is made the ground of a denial of further proof, and condemnation ensues from defects in the evidence which the party is not permitted to supply.

In this case the master did not in the first instance fairly and frankly explain, but denied both concealment and destruction. His explanation is, moreover, not only weak, but untrue, as all health bills count, and not only the health bill from last port, as witness the Danish and French health bills from *all* the ports, with Havre and St. Thomas, respectively, as destination.

By this rule Captain Pherivong, after he had denied concealment and spoliation of bills of health, in first examination, could not be reexamined as to the same. He should in the *first instance*, Judge Story says, confess and explain, if he could, the concealment and spoliation of papers.

In *The Fortuna* (3 Wheaton, 236, 239), this court says:

> Had there been nothing fraudulent intended, these papers ought to have been delivered along with the documentary evidence. But they were not discovered until betrayal by one of the crew. It is upon the investigation of these papers, principally, that the circumstances occur which discover the true character of this voyage.

In the case at bar the purser, after the captain's denial, refuses to perjure himself, and implicates the captain as ordering him to destroy them in Charleston, not having been seen by the captors.

See also Upton's Maritime Warfare and Prize, pages 324, 325, 326, for a full exposition of spoliation of papers.

FINALLY SAILING WITH THESE BILLS OF HEALTH AND MANIFEST *for San Juan* was itself a VIOLATION OF THE BLOCKADE. (The *Circassian*, 2 Wall., 151.)

In the language of the Chief Justice, speaking for this court:

> It is a well-established principle of prize law, as administered by the courts, both of the United States and Great Britain, that sailing from a neutral port *with intent* to enter a blockaded port, and with knowledge of the existence of the blockade, subjects the vessel and, in most cases, its cargo to capture and condemnation. We are entirely satisfied with this rule. It was established, with some hesitation, when sailing vessels were the only vehicles of ocean commerce; but now, when *steam and electricity* have made all nations neighbors, and blockade running from neutral ports seems to have been organized as a business, and almost raised to a profession, it is *clearly seen to be indispensable to the efficient exercise of belligerent rights.* (The *Circassian*, 2 Wall., 151, 152.)

Having been warned on July 5, 1898, officially of blockade of San Juan by an entry in her log by United States steamer *Yosemite* off San Juan, it was a violation of the blockade to sail from Puerto Plata on July 16, with these documents fixing San Juan as a port of destination.

II.

THAT THE OLINDE RODRIGUES WAS RUNNING THE BLOCKADE APPEARS ALSO CONCLUSIVELY BY THE POSITIVE TESTIMONY OF ALL OF THE OFFICERS OF THE NEW ORLEANS, BOTH WHEN THEY FIRST SAW HER AND ALSO WHEN THEY FIRED A SHOT AT A DISTANCE OF 5 MILES, WHEN SHE WAS TO THE WESTWARD PLAINLY VISIBLE WITH HER MASTS WIDE OPEN, RUNNING SOUTHWARD TO SAN JUAN, AND ALMOST WITHIN THE PROTECTION OF THE BATTERIES. THIS IS CONFIRMED ALSO BY THE TELEGRAPH OBSERVER, LARA, AT MORRO CASTLE.

The testimony is as follows:

Captain Folger, of the United States cruiser *New Orleans*, looking *westward* at *Olinde Rodrigues:*

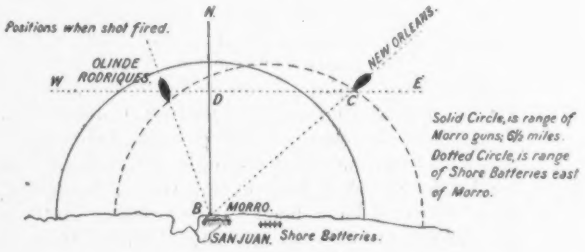
> When first seen, the impression made on me was that she was steering due south (fol. 157). Had anybody at that time (when shot was fired) told me that she was bound for any other port than San Juan, I should have considered him mad (fol. 159). When I saw her, her masts were *wide open* as if you were looking from a point perpendicular to her keel; her masts retained that relative position until shot was fired, when she changed her position, bringing her two masts into one over an angle of five points, and headed for the *New Orleans* (fol. 161). Being *to the west*, she must have been steering nearly south, for her masts were *wide open*, being observed from the eastward (fol. 157).

See also the chart marked by Captain Folger, showing successive courses made by the *New Orleans* from west

half south, west by south, and west-southwest, and *finally down to southwest*, heading for Morro, in order to head off the steamer in the chase (fol. 160, 161, 162). She must have been going to the southward to have required the cruiser to change her course constantly to the south to head her off.

Again, Captain Folger said, "Finding the *Olinde Rodrigues* was drawing across my bows and would reach San Juan before I could stop her, I put my helm to starboard, bringing my head to port farther, so as to bring her back to the position on my *starboard bow*" (fol. 172). The following diagram shows the *New Orleans*, $7\frac{2}{3}$ miles from Morro, on a course southwest when she fired the shot, having the *Olinde Rodrigues* on her *starboard bow* with *masts wide open*, 5 miles away. The *Olinde Rodrigues* must have been steering to the south or to San Juan.

See Lieutenant Rooney's testimony, fol. 314–319.



She was 5 miles away to *the west*, with her masts *wide open* when I fired the shot. (Folger, fol. 158, 175.)

Lieutenant Russell, of the cruiser *New Orleans*:

> The *Olinde Rodrigues* was drawing steadily to the south; reported to commanding officer that steamer was heading in toward harbor of San Juan, and after shot steamer made a wide turn and headed toward the *New Orleans*. She was heading very slightly to the west of Morro Castle until after shot was fired (fol. 187, 196). After shot was fired *Olinde Rodrigues* steered in an *easterly* direction to come to us (fol. 204, 208); she had changed her course to come to us in an *easterly* direction (fol. 209).

Blakeley, watch and division officer United States cruiser *New Orleans:*

> Course of the *Olinde Rodrigues* was southerly, heading apparently for San Juan, about for San Juan Harbor entrance. She was heading for the land; absolutely impossible on that course to have gone clear of the land. Her masts were *wide open* when I first observed her, and remained wide open until shortly after we fired the shot. She came to us parallel with the coast line—about east (fol. 211, 212, 221). My opinion is based upon the fact that her masts were wide open and appearance of ship as viewed from our ship; appearance of hull, mast, and smokestack (fol. 216). Observation as when I first saw her at 8 o'clock and also the time the shot was fired, about 4½ miles from her, when *her course was the same, heading about south, as it appeared to me, and masts wide open* (fol. 212, 221). I mean by *wide open* as far apart as they could be. She could not have been on a course south 69 east and her masts wide apart, wide open; they would have been partly closed toward each other (fol. 222).

It will be noted that Blakeley was watch and division officer from 8 o'clock, and was the officer of the deck of the cruiser *New Orleans* at the time shot was fired.

C. B. Nelson, naval cadet on *New Orleans*:

> Was in forward military top of the *New Orleans* when we first saw steamer. She was apparently heading inshore. She seemed to be almost north of the entrance of San Juan, and, from what we could see from the position of her masts and broadside of vessel exposed, very nearly south—maybe a little to the east, south by east. I observed until she was hove to. Until we fired (at that time we were heading for the Morro) she was bearing on our starboard bow. When she was fired at her masts were well apart; from the ship we could see the whole broadside, masts were wide apart, and we could see everything between the masts (fol. 224, 225). Impossible for her to have gone clear of the land. After shot was fired she came to the *New Orleans* in an *easterly direction* (fol. 226).

Lara, Spanish telegraph observer at Morro, San Juan, July 17, 1898:

> Could see the *Olinde Rodrigues* with his plain eye. Her course was directly to the Morro. She was pointing to the Morro; was coming in the direction of the port (fol. 273). After she changed her course, going toward the *New Orleans*, toward the east; *only changed her course after shot was fired. Before shot* was fired could only see one mast—front one; *after shot was fired, both masts* (fol. 274). He was instructed from the governor's palace in San Juan to look out for the *Olinde Rodrigues* and reported her as coming into the port (fols. 275, 276, 277).

It is to be specially noted that all the testimony of these officers of the *New Orleans* (expert naval men) is not only from their observation when the *Olinde Rodrigues* was

first sighted, but also from their direct, clear, full observation of the *Olinde Rodrigues* at the time shot was fired, when the *Olinde Rodrigues* bore west from the *New Orleans*, and on her starboard bow within 5 miles of the *New Orleans*, and clearly visible on a bright summer morning.

Moreover, the observation of Cadet Nelson, of the *New Orleans*, was from the forward military top of the cruiser and that of observer Lara from the tower of Morro, San Juan.

There can be no doubt as to the accuracy of these observations and the certainty of the fact on this concurrence of testimony by observers at different points.

III.

THAT THE "OLINDE RODRIGUES" WAS VIOLATING THE BLOCKADE CONCLUSIVELY APPEARS AGAIN FROM THE FACT THAT THE "OLINDE RODRIGUES" REFUSED TO OBEY THE SIGNAL FROM THE "NEW ORLEANS" TO HEAVE TO AND STOP INSTANTLY AND TURNED ONLY AFTER THE SHOT WAS FIRED.

That she saw the signal "JW" appears from log of *Olinde Rodrigues*, right-hand page 32, "*7.50 apercu un navire de guerre;*" "*8.10 il signale "JW"* (at 7.50 we saw warship; at 8.10 it signals JW). This signal "JW" means, "Heave to and stop instantly." (See page 2, Part I, International Code Signals. Spottswoods etc., London, 1885.)

Captain Folger, of the *New Orleans* (fol. 158), testifies:

> Before shot, some time previously, I had hoisted a signal which was in plain sight. The order to heave

> to, which he was bound to obey, was in plain sight for several minutes.

It is clear, therefore, that the signal was made and seen. It was also disobeyed.

The claim by Captain Pherivong, of the *Olinde Rodrigues*, that "Upon appearance of man-of-war he turned and ran toward her before shot was fired" (fol. 83) is inconsistent with his log, which is "apercu un navire de guerre 7.50, il signale JW, 8.10, mis le cap dessus" ("saw warship at 7.50; it signals JW at 8.10, and we turned our head to him").

By the log it appears they ran from 7.50, when they saw the cruiser, to 8.10, when she signaled, i. e., *twenty minutes* before they turned to the cruiser. Yet the captain, Pherivong, swears that "upon appearance of man-of-war he turned and ran toward her before shot was fired" (36 interrogatory, fol. 83), and again, "he had already turned his vessel on our warship before the gun was fired; *as soon as he* saw it he turned his vessel toward it." (5 interrogatory, fol. 75, 76.) Captain Pherivong is contradicted by his log, by which they ran twenty minutes *after* they saw the *New Orleans* before they turned.

He is also overwhelmingly contradicted by Girny, head steward of *Olinde Rodrigues*, and by all the officers of the *New Orleans*, and by Lara (observer at Morro), in his swearing that *Olinde Rodrigues* turned toward the *New Orleans* before shot was fired. The testimony is as follows:

Captain Folger:

> After signal, finally shot was fired, and he brought up immediately afterwards. He was caught, and

being discovered under range of my guns, some seconds after he put his helm to starboard and headed for me. (See full account, Folger, fols. 158, 159.)

Lieutenant Russell, who fired the gun, describing the first shot:

> It fell about half a mile ahead of steamer. The steamer proceeded on her course, heading for the harbor of San Juan. Gave order to reload. Just about to get ammunition. The steamer made a *wide turn* and headed toward the *New Orleans*. (See account in full, fol. 188.)

Blakely, watch and division officer of the *New Orleans* (fol. 212):

> *Shortly after* we fired the shot, when the observation was made, "She is turning," and we all carefully watched her with glasses and saw her go through the change from wide open (masts) to closing gradually until she finally headed for us.

Nelson, naval cadet in forward military top of the *New Orleans* (fol. 226):

> Q. When the shot was fired did she change her course?
>
> A. Not immediately; she changed her course shortly after that, before they had time to fire a second shot. She held the course, I suppose, a half minute and they were about to reload, but before they could reload she ran to and headed for us.

Lara, observer at Morro (fol. 273, 274):

> *Olinde Rodrigues* was coming in direction of port and changed her course only *after* the shot was fired. After that she was going toward the *New Orleans*.

Auguste Julien, a British subject, a first-class passenger on the *Olinde Rodrigues*, also testifies:

> The captain boasted in his presence of having forced the blockade, of which he was aware. (21 and 22 answers, fol. 25, 26.)

And also:

> His opinion is they would enter San Juan if they could, both because the captain boasted of running blockade before, and also because they never could get an answer—definite answer—from any of the officers as to where they were going, and when leaving Port au Platte they generally state where the destination is, but at this time nothing was posted as to destination. (24 answer, fol. 26; 30 answer, fol. 30.)
>
> He could see the houses of San Juan very distinctly *without glasses* from the ship at the time of capture. (36 answer, fol. 29.)

Robert Rabb, cook of *Olinde Rodrigues*, a citizen of France, testified:

> He heard from the passengers and among the crew they were trying to enter San Juan. (fol. 49.)

Girny, head steward of the *Olinde Rodrigues* (36 question):

> Her course was not altered on the appearance of the war ship. It was always the same, excepting when the cannon was fired (answer 36, fol. 61).

Here we have the concurrent overwhelming testimony of all the officers of the *New Orleans*, three witnesses from the *Olinde Rodrigues*, and the telegraphic observer at Morro tower, San Juan, that the *Olinde Rodrigues* only turned on and after the shot which compelled them

on the alternative of destruction to heave to. It was only when they found themselves at the mercy of the United States cruiser *New Orleans* and under her guns that she turned as an alternative then of immediate broadsides and certain destruction, after they had defied the signal and attempted to run under the guns of Morro in disobeying it.

This appears again by the remark made by the paymaster to the captain (see fol. 182, Folger; fol. 192, 193, Russell), who inquired of Lieutenant Russell when he boarded her, "How fast do you steam?" Mr. Russell replied, "21 knots." Then the paymaster said, "It would not have done us any good, anyhow," in French, an admission that with the cruiser *New Orleans* at that speed plunging down on them, to continue to defy and disobey and to run into port San Juan as they first attempted was useless, and the best policy and sure safety for life then was to heave to under the shot, rather than risk instant destruction from her broadsides getting every moment into closer range.

It is to be noted also that the *New Orleans*, on her course southwest at that time (time she fired the shot), heading for Morro, $7\frac{2}{3}$ miles distant, was within $1\frac{1}{6}$ miles ($7\frac{2}{3}$ minus $6\frac{1}{2}$) of the range of Morro guns, and about within the range of the guns of the shore batteries to east of Morro for 3 miles. To run a mile or so more, or three minutes more, on this course to head off the *Olinde Rodrigues* would certainly draw the cruiser *New Orleans* under the guns of batteries of Morro and shore batteries to the east. The chase had to end there or else the *New Orleans* would encounter the peril of an engagement

with the enemy's batteries if she proceeded further in her effort to head off the *Olinde Rodrigues* from San Juan.

It is also to be noted that the *Olinde Rodrigues* was herself nearly within the range and under the protection of the batteries at the time the shot was fired, as Captain Folger said, "I turned to my officer and said. I fear we have lost him; he will get in before we stop him" (Folger fol. 158). On this state of fact, overwhelmingly established, the law is fully settled.

The following case of the *Charlotte Christine* (6 Rob., 101), decided by Sir William Scott, and followed by the Supreme Court of the United States in the case of the *Cornelius* (3 Wallace, 214, 225), is in many particulars identical with this case, on the grounds on which the vessel was condemned.

(1) The vessel claimed to be on the "ordinary course to Caen, France, though she attempted to break the blockade of Havre.

(2) She claimed, as here, that "*she brought to upon first appearance*" of the cruiser.

(3) Permission was given by the court to the captors (officers of the cruiser), as here, to answer this representation.

(4) She actually refused to bring to after notice, except on shot fired.

(5) She was almost under protection of batteries, drawing cruiser under batteries.

On this state of fact the court, Sir W. Scott, say (*The Charlotte Christine*, 6 Rob., 101):

> This was the case of a Danish vessel, with a cargo of timber, taken off Cape La Heve, and proceeded against on the ground of a breach of the blockade of the Seine.
>
> On the original depositions the master had stated that he was bound from a port in Norway to a market in France; that he was apprised of the blockade of Havre; that on his passage he was warned not to enter any of the French ports as far as Fecamp, which were put under blockade August 9, 1804; that he came to Beachy Head and sailed from that port with an intention of proceeding to Caen; that he had come off Cape La Heve for the purpose of taking a pilot for Caen; that he had sailed in sight of the British frigates for some hours before the capture, and that he had brought to on the first appearance of the boat that came off to examine him; that he was actually sailing for Caen, and had no intention of breaking the blockade of Havre. Permission was given to the captors to answer this representation, and affidavits were now exhibited from the commanding officer and other officers and men of the capturing vessel, which stated the vessel to have been in tow by a pilot boat and making for the shore when she was first hailed; that she refused to bring to until the captors were obliged to fire a shot at her; that she was so near to the shore as to be almost under the protection of the batteries, and that several shots were fired from the batteries at the capturing boat; that she was steering in for the shore when she was first perceived. * * *
>
> According to the master's account, it was only for the purpose of taking a pilot for Caen that he made for Cape La Heve; and that is represented to be the

point where pilots usually apply for Caen, which could not be so well approached on the other side. That this may be the ordinary course for Caen is not improbable, but the practice must, I conceive, have been a little interrupted by the continuance of the blockade of Havre. (Idem., 102.)

* * * There was then no necessity to go in farther, yet he continued to approach the shore, and after he had been hailed by the captors and had refused to bring to on the first notice This view of his conduct does, I think, warrant, and indeed compel the court to hold that whatever the equivocal cause of such a situation may be, a person can not be allowed to approach so near to a blockaded port as to place himself *almost* within the effectual protection of the shore and with no necessity existing. To allow such an approach would render the whole purpose of blockade perfectly nugatory. (Idem., p. 103.)

What had he to do then but to have waited where he was, and where he had passed the frigates, as he says, without being considered to be in a suspicious situation? Instead of this prudent and natural course of conduct, he continued to approach, and in defiance of the captor's boat, since it appears that he did not bring to until a gun was fired at him. The extreme imprudence of this behavior, and the great improbability that any person would so act but from some sinister motive, lays him under the unavoidable imputation of being engaged in an attempt to break the blockade. It is a possible thing that his intention was innocent, but the court is under the necessity of acting on the presumption which arises from such a conduct, and of inferring a criminal intention. (Idem., 103–104.)

This case is cited, approved, and quoted from on this very point, in the last four lines above, by the United

States Supreme Court in the case of *The Cornelius*, 3 Wallace, 214, 225.

The same doctrine is announced and enforced in *The Apollo* (5 Rob., 286, 289–90). Sir William Scott says:

> It may be so; but he could be under no doubt as to his negative duty, as it may be called, that he was not to go into the blockaded port. It must be clear and obvious to him that the neighborhood of the blockaded port can not be considered as the fit locus deliberati for his future plans. If the court was to admit that a master might lie to, and call a council of his own thoughts, or of those of his crew, in such a place, the rights of blockade could no longer exist to any purpose; he would stay, in all cases, until an opportunity offered of slipping into the interdicted *port*. It would be practically inconsistent with the exercise of this right of war to hold that the blockading force is bound to stay by him and wait for the result of his deliberation in this suspected place. On the contrary, his first duty is obvious, *fuge litus;* that neighborhood is, at all events, to be avoided. He is bound, on the first notice, to take himself out of an equivocal situation, and if he obstinately refuses and neglects so to do, this court will hold, till it is corrected by the judgment of the superior court, that such a conduct will amount to a breach of the blockade, and subject the vessel to condemnation. Then what is the fact? The master declared, according to the deposition of himself and of the other witnesses, not only "that he must go," which, it is said, would be the same expression in German as "that he ought to go," but also that "he will go" to Dieppe, and after due warning he is still found near the same place, with the ship's head toward Dieppe. Taking this representation to be true, as I am bound to do, it appears incredible to me, I confess, that he

should, as he now asserts, have acted in this manner without any intention of going into Dieppe. If, however, it is possible that this assertion can be true, I have only to lament, as I have abundant occasion to do, the folly and obstinacy of masters who will place themselves in situations which it is impossible for the court to admit to be innocent, without breaking down all the rules on which alone the principle of blockade can be sustained. On these grounds I feel myself obliged to pronounce this vessel guilty of a breach of the blockade, and consequently subject to condemnation.

The defiance of the signal to "Stop instantly and *heave to*," and continuing on his course until brought to by a shot, as in case at bar, is very much stronger than this case of the *Apollo* condemned by Sir William Scott. (See also *The Shepherdess*, 5 Rob., 262.)

IV.

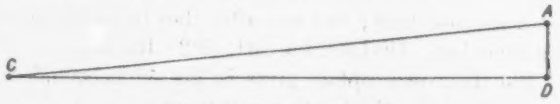
THAT THE "OLINDE RODRIGUES" WAS RUNNING THE BLOCKADE APPEARS AGAIN CONCLUSIVELY BY THE FACT THAT THE ACTUAL COURSE OF THE "OLINDE RODRIGUES" BY HER OWN TESTIMONY CARRIED HER UNDER THE BATTERIES OF SAN JUAN.

It appears from the log of the *Olinde Rodrigues*, page 32 (left-hand page), that from 4 a. m. her course, which was previously *S. 69 E.*, was changed to *S. 73 E.*, and on this S. 73 E. course from 4 a. m. the log claims they would pass "off San Juan" "8½ miles" (see right-hand page 32, log *Olinde Rodrigues*).

This log is not sworn to. It was written up *after* the capture, as the last statement in it was "making prepar-

ation for the whaleboat that cruiser sent to them." The captain, Pherivong, in his testimony and chart attached (fol. 41), showing "*actual* route he was taking at time of capture," makes the last course from 4 a. m. to time of capture, 8.10, *S. 69 E.*, i. e. that they *did not* change the course at 4.30 a. m., but continued *S. 69 E.*, which they had been running since midnight. The captain's oath contradicts the written log. The difference between *S. 69 E.* and *S. 73 E.* is 4 degrees. The course *S. 73 E.* from 4.30 a. m. by log would bring them 8½ miles off San Juan. The course which they "actually took," *S. 69 E.*, would bring them so much nearer to San Juan as the deviation is 4 degrees in 40 miles, the distance traveled by the *Olinde Rodrigues* according to her log since 4.30 a. m. (Three hours and 40 minutes at 10½ knots an hour.)

This deviation is at least 4 or 5 miles (see diagram) and, on the *S. 69 E.* course, the "actual route" sworn to by Captain Pherivong, the *Olinde Rodrigues* would arrive off San Juan 4 or 5 miles nearer than by the *S. 73 E.* course; i. e., about 3 or 4 miles from Morro; that is, under the *protection of the batteries*, which had a range of 6½ miles. (See testimony of Emory and Burns, Record, fol. 248, 262.)



This diagram shows a deviation of four degrees measured on compass (S. 73 E. and S. 69 E.). If C D be distance traveled and be 40 miles (from 4.30 a. m. to

8.15 a. m. at 10½ knots an hour), the deviation would be A D, which is about one-tenth of the distance traveled, or four miles at least.

This last course of the *Olinde Rodrigues* and the contradiction between Captain Pherivong's oath and the log is of the gist and marrow of this question.

The captain's oath shews the log fabricated, written as it was after capture, so as to make it appear that the course when charted *as by log* from Puerto Plata would pass 8½ miles from San Juan. To do this they inserted a *S. 73 E.* course, a more easterly course from 4 a. m. instead of the more southerly course *S. 69 E.*, "actual route," well knowing that S. 69 E. course from point of departure at 4.30 a. m. would, when laid off on chart, bring the *Olinde Rodrigues*, in about 3 or 4 miles off San Juan, under the guns of Morro and shore batteries. This fabrication was an endeavor to escape this fact and its consequences.

At the time of capture their course was concealed from the prize master and they acted suspiciously.

Lieutenant Russell, of the *New Orleans*, says that they acted in a peculiar manner about the log and course; they had *two* courses, and did not deliver the log book (journal de officier), in which courses are recorded, on his first visit and demand, but only three hours afterwards, on his second visit; this was after they had time to write up their log. (Folger, fol. 181, 182; Russell, fol. 191.)

But their own captain gives in his evidence and chart contradiction to the log they wrote up.

This wide-open gap in this case appears also in the questions asked by counsel for the *Olinde Rodrigues* of

Lieutenant Rooney, navigator, in asking him to lay off their courses on the chart. At fol. 328, Mr. Govin, for claimant, asks Navigator Rooney, of the *New Orleans*, to lay "a course *south 69 east* 2½ miles from old French Cape." (This is the captain's course.)

Answer. That would steer you in on the land at Cape San Juan!

Again Mr. Govin corrects the question (fol. 328).

Q. I correct the question by using the course to Cape San Juan. I made a mistake in saying to Culebra Passage, to see the light off Cape San Juan.

A. (Lieutenant Rooney.) It will steer you, if you pass Cape Viejo Frances 2½ miles and steer *south 69 east*, it would run you into the land. It would not give you any clearance there. You would run *into* the land a little to the eastward of *Port San Juan*. You would probably pass *Port San Juan* a mile on that course (fol. 328).

Q. (By Mr. Govin.) That is to say, if you took a *south 69 east* course from about 2½ miles from the old French cape you would pass about a mile from San Juan?

A. About *a mile* from *Port* San Juan, *not* Cape San Juan (p. —).

Q. (By the Court.) Cape San Juan and *Port San Juan* are different points?

A. Cape San Juan is the light. (Rooney, fol. 328.)

It is to be noticed that laying off the course *south 69 east* on the chart brings the *Olinde Rodrigues* a mile from Port San Juan. This is the course Captain Pherivong swore to, *S. 69 E.*

The counsel for claimant, Mr. Govin, immediately flies

this *sworn course* of the *Olinde Rodrigues's master* and its results, and says:

> Mr. GOVIN. I should like the *log* which is in evidence of the French ship. The difference in the names are very slight, but in formulating these questions I have gotten some of the points mixed. Now the *log* shows the course we followed, and I want the lieutenant to verify the course, and the *log* will show it (fol. 328).

And after recess (at fol. 337, Rooney) Mr. Govin resumes the subject:

> Q. (Govin.) Now, Lieutenant, will you please lay out a course as is read to you. "Old French Cape, steam 2 miles distant." * * * "At 5 o'clock in the morning, after an observation, we came back to *south 73 east*, in order not to pass San Juan too near, passing San Juan about 9 miles at 8 o'clock in the morning." (Rooney, fol. 337.)

Here there is substituted for the captain's *sworn* course, *S. 69 E.*, to, that ran into the land, passing off San Juan 1 mile under the batteries, the fabricated, unsworn course of the log, *south 73 east*, that no one swears to, to pass San Juan 9 miles off! The only escape for claimants on their own evidence is, being caught by the captain's sworn course when laid off on the chart, to elude it by the fabricated, unverified log contradicting their master's oath. Such is the bald nakedness of this defense.

By the course they were running, by their own evidence, they were to bring up 1 mile off San Juan, i. e., 5 miles *within* and *inside* of the circle of all the batteries in their 6-mile range of cannon shot! This confirms the positive testimony of the officers of the *New Orleans* and the ob-

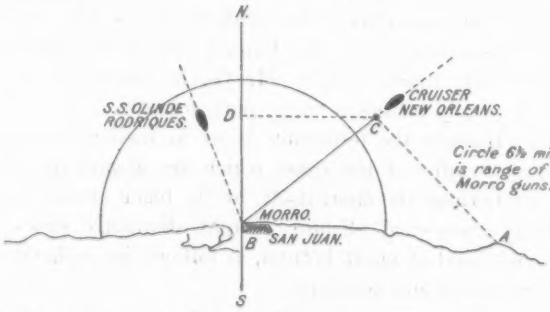
server Lara, at Morro, who testify she was heading for San Juan.

It is clear therefore that by their course, by *their own sworn evidence*, they were running the blockade.

V.

THE POSITION OF THE "NEW ORLEANS" WHEN THE SHOT WAS FIRED AND THE POSITION OF THE "OLINDE RODRIGUES" WHEN THE SHOT WAS FIRED, SHEW CONCLUSIVELY SHE WAS RUNNING THE BLOCKADE.

The position of the "*New Orleans*" when the shot was fired was a little westward of point *C* on Plat A, Rooney's testimony. She was 7⅞ miles from Morro, bearing southwest, and less than 5 miles to the east from north and south line through Morro, and 6 miles offshore.



Lieutenant Rooney testifies (see Plat A, Rooney, frontispiece, fol. 315–319).

The point C, 9 o'clock position of *New Orleans*, is the intersection of cross bearings carefully taken of Morro and Telegas Point at 9 a. m.

The point C is 7⅔ miles from Morro, bearing southwest, and 5 miles from point D, the intersection of a line drawn west with north and south line through Morro. D is 5⅔ miles from Morro. (Plat A, Rooney, frontispiece, fol. 316, 317.)

The point C is a little eastward of the spot where the *New Orleans* fired the shot, for it appears the shot was fired at 8.12 a. m., and the *New Orleans* stopped as soon as steamer headed to and waited for the steamer to come to her (Folger, fol. 159). It was forty-eight minutes between firing of shot at 8.12, and the time of taking the bearings at 9 a. m. (Rooney, fol. 315). In these forty-eight minutes (8.12 to 9 a. m.), the *New Orleans* was drifting eastward (the easterly current prevailing there) to point where bearings were taken at point C at 9 a. m. (Rooney, fol. 322; Folger, fol. 180; Blakeley, fol. 220.

The alleged conflict of this evidence (at fol. 220, Blakeley's testimony) with the United States Government pilot charts, insisted on by Mr. Govin, claimant's counsel, is wholly mistaken on his part, fol. 220.

(1) Because the testimony is as to inshore currents within 8 miles of the coast, which are always *variable*.

(2) Because the chart itself, by the black arrows indicating a *westward* offshore current, distinctly states at the left hand of chart bottom, as follows, in explanation of the colors and symbols:

> *Oceanic currents.*—The *yearly average* set of the stream and drift currents is shown by the small black arrows. (See chart.)

The "small black arrows" pointing westward only indicate the "*yearly average set.*" The *eastward* inshore

current in *July, 1898*, as positively testified by the officers of the *New Orleans*, is not in conflict with this general statement.

(For variation of currents in West Indies, see Navigation of Gulf Mexico and Caribbean Sea, vol. 1, fourth edition; The West India Islands, from United States Bureau of Navigation, Hydrographic Office, Washington, 1898, p. 9.)

Allowing for the turn and short distance the cruiser went to *northeast* (Rooney, fol. 314) and for this drift of forty-eight minutes in the easterly current, the *New Orleans* (having drifted eastward forty-eight minutes) was about 4 miles, more or less, from and *east* of the north and south line through Morro *when she fired the shot* at 8.12 a. m.

This shot was 4½ to 5 miles range (Folger, fol. 163) and fell to about one-half mile ahead of the steamer, and therefore intercepted the *Olinde Rodrigues* directly off of San Juan, a little to the *west* of the north-and-south line through Morro, her masts wide open, steering almost due south, as we have seen by testimony of all officers of the *New Orleans*.

These figures, accurate charting by cross bearings, and current forces testified to by Navigator Rooney of the *New Orleans* as exact, and confirmed by Captain Folger and Blakeley (watch and division officer on the deck), and Lieutenant Russell, and by Ensign Nelson in the military top, all put the *Olinde Rodrigues* a little to the *westward* of the north-and-south line through Morro when the *New Orleans* fired the shot. And this is the exact position she appeared to Observer Lara at Morro

tower, who drew, at the request of the court, a rough sketch of same, attached to his testimony at page 141, fol. 297, by which the *Olinde Rodrigues* was *west* of the north-and-south line heading for Morro when shot was fired.

This is again confirmed by the time it took the *Olinde Rodrigues* to come to the *New Orleans*.

The shot was fired at 8.12.

Lieutenant Rooney came on deck at 8.45 and then the *Olinde Rodrigues* was approaching from the westward on the port bow one-fourth of a mile away (fol. 314). In thirty-three minutes the steamer would make about $5\frac{3}{4}$ knots (her speed being $10\frac{1}{2}$ knots by her log, p. 32) and coming to the *New Orleans* at point C at 9 a. m., $5\frac{1}{15}$ miles from the north and south line through Morro, she must have come from a point a little to *west* of that line.

Captain Folger, judging by his eye, says, "I brought the vessel up directly on the north and south line as indicated on the chart" (fol. 174). Officer Nelson, also judging by the eye, from military top of the cruiser, says, "she was not on north and south line until we hove her to" (fol. 228). In the light of this overwhelming testimony, both of accurate recorded cross bearings taken at the time, at 9 a. m., by skilled navigators and the concurrent testimony of officers and the confirmatory observation of Observer Lara at Morro, the statement of Captain Pherivong of the *Olinde Rodrigues*, without taking any bearings or cross bearings, that he was captured when he had just passed the port of San Juan, "about *7 or 8 miles eastward of the port*" (fol. 79), is worthless, to say the least, and is like his statement that he turned and went to the cruiser as soon as he saw her; the overwhelming testi-

mony being that he continuously and deliberately disobeyed the signal to heave to, and came to only on a shot that revealed him to be under the guns of the cruiser and compelled instant obedience or destruction.

Moreover, the statement of Landgren, second captain of the *Olinde Rodrigues*, as to place of actual capture (i. e., boarding, when vessels came together) is "after having passed the port of San Juan and gone *4 miles* east of it." (See answer to 19 interrogatory, Landgren, second captain *Olinde Rodrigues*, fol. 69.)

The "*4* miles *east* of San Juan" had been run by the *Olinde Rodrigues after* the shot was fired at her 5 miles away when she was just a little to *west* of the north and south line through San Juan, and she turned and came to the *New Orleans*, a distance of about 5 miles, while the *New Orleans* waited for her, watching the Swedish bark to the northeast.

In this testimony the second captain of the *Olinde Rodrigues* flatly contradicts Captain Pherivong and confirms the concurrent and overwhelming evidence of the officers of the cruiser *New Orleans* and the observer, Lara, at Morro, that the *Olinde Rodrigues* was a little to *west* of north and south line through Morro *when the shot was fired;* and that she came eastward to the *New Orleans*, about 5 miles, while the *New Orleans* waited for her, watching the Swedish bark.

It will thus be seen from the position of the *New Orleans* when shot was fired, she being 6 miles offshore and within about 4 to 4½ miles of the north and south line through Morro, that the *Olinde Rodrigues*, coming to her in an *easterly* direction after shot was fired, must have come from a point within 6 miles of Morro; that

is, from a point within range of the batteries of Morro; in other words, she was actually hove to within the blockaded station and within the range of Morro and the shore batteries, and that, after she had continuously defied the signal previously to "stop instantly and heave to," and was only brought to under shot fired.

The cases which we quote *supra* from Sir William Scott, affirmed by our own Supreme Court, make this position and conduct on the part of the *Olinde Rodrigues* each equally a distinct ground of condemnation, and especially after she had been warned officially by United States steamer *Yosemite* off San Juan, by entry in her log on the 5th of July, of the existence of the blockade of San Juan, and when thereafter her duty was to see to it that she put herself in no equivocal position, and always, in the language of Sir William Scott, to *shun that neighborhood;* "FUGE LITUS!"

VI.

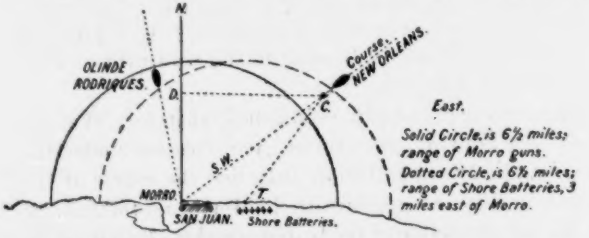
AGAIN, THE "OLINDE RODRIGUES" WAS CONCLUSIVELY VIOLATING THE BLOCKADE, BECAUSE, RUNNING IN UNDER PROTECTION OF MORRO BATTERIES, SHE WAS DRAWING THE CRUISER "NEW ORLEANS," IN PURSUIT OF HER, UNDER THE RANGE OF THE MORRO AND SHORE BATTERIES. THIS OF ITSELF, INDEPENDENT OF HER INTENTIONS, AS A MATTER OF LAW, RAISES "A PRESUMPTION DE JURE" OF HER GUILT AND CONDEMNS HER.

The *New Orleans* had chased her in 6 miles, on a circular course from west one-half south, gradually changing course more and more to southward to head her off and to keep her always on the same bearing, the starboard

bow of the cruiser. (Captain Folger, fol. 160–161, and his chart.) This is the fixed rule in chasing laid down by highest authorities. "The chaser will steer a course slightly converging to that steered by the chase. * * * By constantly keeping the chase *on the same bearing* the chaser will attain the chase in the shortest possible time and by the shortest route." This is "the rule in chasing to leeward or in chasing under steam." (Luce's Seamanship, pp. 563, 564. Used in U. S. Naval Academy and quoted as standard authority by the Supreme Court of the United States.)

Finally, on this circular course, the *New Orleans* fired the shot near the point C (Folger, fol. 158), the *New Orleans* then heading for Morro on a course *southwest*, and having the *Olinde Rodrigues* on her *starboard bow* to the westward 5 miles away.

By Rooney's testimony and chart, made on careful observations by cross bearings, the *New Orleans* was at 9



a. m. at C, having (while waiting for the *Olinde Rodrigues*) drifted a little eastward from spot she fired shot at 8.12 a. m.

This point C is $7\frac{2}{3}$ miles from Morro, bearing southwest, and is about 6 miles ($5\frac{2}{3}$) from shore.

The *New Orleans*, when she fired the shot on this course heading *southwest* for Morro, $7\frac{2}{3}$ miles away—

(1) Was within $1\frac{1}{6}$ miles of the extreme range of the guns of Morro ($7\frac{2}{3}—6\frac{1}{2}$, range of batteries, equals $1\frac{1}{6}$).

(2) Was nearer than $7\frac{2}{3}$ miles to the shore batteries to the *east* of Morro for 3 miles, and probably then within their extreme range ($6\frac{1}{2}$ miles).

(3) At a speed then attained the *New Orleans* would in *four minutes* ($1\frac{1}{6}$ miles) be under the guns of Morro.

(4) At any moment the shore batteries 3 miles *east* of Morro might open fire on her.

She was on the verge of the range of the batteries. To chase farther was to draw under the guns and risk fire of the enemy.

As Captain Folger says—

> Remembering the Morro, I had to keep away from, fearing they were going to fire (fol. 176).
>
> I was finally heading direct for Morro before the moment arrived at which I considered her within the range of my guns. (Folger, fol. 161.) I fired at him 5 miles away, bearing to the westward. (Folger, fol. 175.)

It is overwhelmingly established, therefore, that the chase was drawing the cruiser *New Orleans* under the guns of the Morro and shore batteries, the course of the *Olinde Rodrigues* being directly to Morro and then almost under the protection of the batteries and necessitating the cruiser pursuing (keeping her on starboard bow, "always same bearing") to pass within the range of the enemy's guns.

These shore batteries and Morro were manned and watching to protect the vessel running the blockade, and

engaged the American warship. (See testimony of Emory, Burns, and Lara.)

It was under these circumstances, the *Olinde Rodrigues* having defied the signal and run on toward Morro, Captain Folger turned and said to his officer, "I fear we have lost him; he will get in before we can stop him." "At that time we were preparing to fire." (Folger, fol. 158.)

The range of the Morro and shore batteries was 6½ miles, and the shore batteries extended *3* miles *east* of Morro, by the following evidence:

RANGE OF MORRO AND SHORE BATTERIES.

Emory, of *Yosemite* (fol. 248): At least 6½ *miles*—6½ miles, from experience. Burns, of *Yosemite* (fol. 262), testifies: "Range, 6½ miles of Morro guns." Lara, observer at Morro (fol. 277), testifies: Prepared and instructed at Morro and other batteries to protect any vessel entering. Artillerymen slept next to the loaded guns. Captain Folger (fol. 162): Range of batteries of Morro, *6 miles*, to my knowledge.

These facts make a clear case of a violation of the blockade of San Juan "a presumption *de jure*." The authorities are full to the point.

In the *Gute Erwartung* (6 Rob., 182):

> This was a case of a Lubec ship that had come from Oporto, with an *asserted destination* to Caen, but was captured *20 miles* to the northwest of that port, and about the same distance from Havre.

Sir William Scott says:

> This is a case of a ship that is *asserted to have been bound to Caen*, and to have been proceeding

toward Havre in quest of a pilot to carry her to the port of destination. * * *

But there is an ulterior circumstance which presents a more unfavorable aspect. In the former case the vessel had continued her course close under the batteries, and was cut out at some *considerable risk and danger to the blockading vessel.* In that case there was an illegal intention pursued to an illegal act; for a neutral vessel can not be permitted so far to interfere with the exercise of a blockade as to expose the force maintaining it to the annoyance of the enemy's guns. In the present instance the vessel was at a distance of near 20 miles; but the unfavorable circumstance to which I allude places her, in construction of law, in the same situation which the other vessel had actually reached. For the master says "that the course in which he was steering would have carried him directly to Havre, and that he should have continued in that course, though *not into the port of Havre;* but that he should have gone close under the land and have taken a pilot for Caen." Here, then, we perceive the same intention and in the course of being pursued to the same illegal effect. *How can this intention be considered as innocent? It had not been carried so far as in the other case,* I acknowledge; but only because the vessel was interrupted before she had arrived at the spot where the other ship was actually taken. It is impossible that any blockade can be maintained if such a practice is allowed, that a vessel under a destination to a port not interdicted shall be at liberty to pursue her course in such a manner as must draw the cruiser employed in that service under the range of the enemy's batteries. It is at all times matter of regret that the property of innocent persons should be exposed to hazard by the mere imprudence of their master;

but it is *impossible to relax the principle* that the employer is legally affected by the acts of his agent. I am of opinion that the master in this case had declared an unlawful purpose, and was employed in pursuing it to an unlawful act, and that the ship and cargo must be pronounced subject to condemnation. (*Gute Erwartung*, Id., 183–184.)

So again Sir William Scott says:

But all the general consequences of such a blockade must be supposed to have been duly considered by the government imposing it, and when the measure is once applied, the court is under the necessity of enforcing it, on the only principles on which any other blockade ever has been or can be established. Were the court disposed to desert those principles, and to wander into new speculations respecting blockades, I do not observe that the gentlemen have even suggested the new principles on which it could act. The court is therefore under the necessity of applying the same general principles on which all former decisions on this right of war have been founded. * * *

The neutral merchant is not to speculate on the greater or less probability of the termination of the blockade, to send his vessels to the very mouth of the river and say, If you do not meet with the blockading force, enter; if you do, ask a warning and proceed elsewhere. Who does not at once perceive the frauds to which such a rule would be introductory? The true rule is that after the knowledge of an existing blockade you are not to go to the very station of blockade under pretense of inquiry. * * *

But in no case was it held that they might sail to the mouth of a blockaded port to inquire whether a blockade, of which they had received previous formal notice, was still in existence or not. If particu-

lar parties are innocent in their intention, it is still a measure of necessary caution, and of *preventive legal policy*, to hold the rule general against the liberty of inquiring at the very mouth of the blockading port, which would amount in practice to a universal license to attempt to enter, and on being prevented, to claim the liberty of going elsewhere. It is next contended that the master, on being brought to, said that he was not going to a blockaded port, but that he would go, in obedience to his instructions, to a port in Norway, and therefore that the claimant is entitled to the benefit of a deviation. But this comes too late; he was taken in act of going toward the blockaded port. The act is, in my opinion, to be taken as completed by the attempt. If the owners are innocent, they must, in law, be bound by the indiscretion of their agent. But this is not a case of persons suffering merely by the misconduct of their agents. The owners here are directly implicated by the instructions which they themselves have given. It may fall hardly upon them, but I feel myself obliged to pronounce that there would be no principle upon which a blockade could be forced if such excuses as these were to be admitted, and that these vessels are subject to condemnation. (*Spes and Irene*, 5 Rob., 76, 78–81.)

In the *Neutralitet* (6 Rob., 30, 35), Sir William Scott says:

> It will not be necessary in the present case to lay down a general principle on this point, but I am disposed to agree to a position advanced in argument that a belligerent is not called upon to admit that neutral ships can innocently place themselves in a situation where they may with impunity break the blockade whenever they please. If the belligerent country has a right to impose a blockade, it

must be justified in the necessary means of enforcing that right, and if a vessel could, under the pretense of going farther, approach cy près close up to the blockaded port, so as to be enabled to slip in without obstruction, it would be impossible that any blockade could be maintained. It would, I think, be no unfair rule of evidence to hold as a presumption de jure that she goes there with an intention of breaking the blockade, and if such an inference may possibly operate with severity in particular cases, where the parties are innocent in their intentions, it is a severity necessarily connected with the rules of evidence and essential to the effectual exercise of this right of war.

In the *Newfoundland* (89 F. R., 510), the district court of South Carolina (1898), quoting and applying these words of Sir William Scott in that case, said further (pp. 519, 520):

> It must be conceded that there is no proof of any attempt to enter the port of Havana; that is to say, no witness has testified to seeing her heading that way. It must also be admitted that the testimony as to loitering falls very far short of the proof offered in the *Neutralitet* (6 C. Rob. Adm., 30), the *Appollo* (3 C. Rob. Adm., 308), the *Charlotte Christine* (6 C. Rob. Adm., 101), the *Gute Erwartung* (id., 182), the cases relied on by the Government. All of these cases arose before the days of steam power, but the principles upon which they rest, and which I hold to be sound principles, require their application to conditions now prevailing, when the use of steam power renders the eluding blockades a far more facile undertaking; and I feel compelled to hold that the whole purpose of a blockade would be rendered nugatory if a steam vessel is allowed, after notice, to approach in the nighttime so near to a

blockaded port as to be able to see signals from the shore, and to watch for the opportunity of entering if it should appear that the coast is clear, or the vigilance of the belligerent cruisers is for the time relaxed. A ship so approaching lays herself under the unavoidable imputation of being engaged in an attempt to break the blockade, and there is a necessary presumption of sinister motive which must be rebutted by positive proof that her presence there is innocent, that she is there either from some necessity, or in the course of a voyage which *requires her* to pass that way. I feel bound to hold that the weight of the testimony is on the side of the Government in fixing her position at 6 o'clock at a point from 5 to 8 miles from the nearest shore, and not, as fixed by her officers, at a point about 14 miles from the shore; for why should the mate of the *Tecumseh* have warned them to keep off farther from the shore—a warning which they admit having received—if they were where they claimed to have been, far beyond the reach of any shells against which the warning was given? For this and for the reasons already stated I must conclude that she was at that point at 6 o'clock, and that at 8.30 she was at a point not more than 10 miles distant and not more than 10 miles from Havana light, just outside the cruising grounds of the blockading fleet, from which she could readily see whether it was safe for her to attempt to enter. Having denied that she was there, and having failed to sustain that denial by adequate proof, and having failed to give a satisfactory account of her being in that neighborhood at at all, I am compelled to condemn both ship and cargo.

The facts of this case are very much stronger than the *New Foundland*, for within *three minutes both* steamer and

cruiser would have, on *their courses*, run under the guns of the batteries, in actual chase, after a defiance by the *Olinde Rodrigues* of the cruiser's signal, the shot within range alone finally ending the chase, when the *Olinde Rodrigues* then first realized her destruction as certain unless she hove to.

VII.

THE MOTIVE FOR RUNNING BLOCKADE BY THE "OLINDE RODRIGUES" IS ALSO CLEAR AND ADEQUATE.

The difference between intent and motive is that in all criminal cases intent, the act of the will, must appear; motive, that which moves the will, may be and remains often undetermined.

In this case we have proven both the intent to violate the blockade and the intent being actually executed. This is sufficient in itself.

The motives also in this case are all apparent, though the district judge seems to think it inconceivable. They are as follows:

A. The master had the instructions of his principal after notification of blockade on the 5th of July by entry in log, to run the blockade on July 17. This appears from his own testimony, for he swears and the purser swears—

(1) The *agent* of his company (Captain Pherivong, fol. 87, his additional testimony) at Cape Haytien on *July 13* furnished him with (*a*) bill of health and (*b*) manifest of no cargo for San Juan at *same time* the agent of company furnished him with bill of health from French con-

sul, destination Havre; and bill of health from Danish consul, destination St. Thomas," which are in evidence.

The *agent of the company* therefore gave him papers for *three* destinations, San Juan, St. Thomas, and Havre. (See testimony of Purser Darondeau, fol. 37, and Captain Pherivong, fol. 87.)

(2) Again this was repeated a second time at Port au Prince July 14, by "the *agent* of the company" giving him (*a*) bill of health and (*b*) manifest for San Juan. (See testimony Purser Darondeau, fol. 37, and Captain Pherivong, fol. 87.)

(3) Again *agent of the company* at San Juan (knowing of the blockade) cables to him to Cape Haytien, July 13, (*a*) that he must stop at San Juan; (*b*) that he *would have* to take fifty first-class passengers. (See testimony purser, fol. 37, and captain, fol. 87.)

It thus appears that there was a concurrence of instruction of "*agents of the company*" to him to go to San Juan, and the "agents of the company" and the Spanish consuls at the respective ports furnished him with bills of health and manifests for San Juan as a port of destination. In preparation, means, instruction, and object in view, the *agents of the claimant company* therefore concurred and combined to have the *Olinde Rodrigues* run the blockade.

B. The particular motive and object, as far as it has transpired, was to take *fifty first-class passengers* fleeing from San Juan. Why the steamer would run the risk is also clear.

(1) Because they thought they could elude or outrun the *Yosemite*, under their former experience, and evidently

mistook at first the cruiser *New Orleans* for the *Yosemite*, ignorant of her great speed, 22 knots, and long range of her guns. The *New Orleans* was a tremendous surprise. The speed of the *New Orleans* was the first question asked of Prize Master Russell by purser on boarding her (fol. 182). That was what caught them.

(2) Because fifty first-class passengers at that particular time, fleeing with their treasure through that blockade, meant any passage money the *Olinde Rodrigues* might ask, from $1,000 upward. Again, they might be taking Spanish officials, Spanish archives and records, and Spanish official treasure, all to be saved from the then certain impending storm of the American advance "on to Porto Rico."

Let us recall the facts of history, of which the court will take judicial notice, as they existed on July 17, 1898.

(1) The port was blockaded; there was no escape from the island; San Juan was its capital. No other chance offered for escape by steam vessel.

(2) San Juan was bombarded suddenly in May by Sampson's fleet, and the city was shuddering now before another siege and certain capture.

(3) Cervera's fleet had been destroyed July 3, and Spain's power in the Antilles doomed.

(4) Santiago, after short investment by land, had just fallen, a sign that all resistance was vain.

(5) The cry from America was, "On to Porto Rico!" (not to Havana, because of its then unhealthy climate); the United States wishing to be immediately in possession of Porto Rico. San Juan expected to be next invested.

(6) The horrors of American invasion as depicted to the Spanish mind, as witness the proclamations of the Spanish military governors of Cuba, Porto Rico, and Philippines, declaring—

(*a*) To soldiers, that Americans would kill them, even after taking them prisoners.

(*b*) To women, that they would be dishonored.

(*c*) To citizens, that they would loot them of all treasure.

(7) There were also Spanish official records and official treasure to be also secured and removed at any price.

(8) This steamer, due July 17 on eastward voyage, was the sole escape. There were also instructions to look out for her from governor's palace in San Juan, showing the expected aid.

(9) The captain of the steamer had nothing to lose. He was under the instructions of agents of the company from three ports. He boasted of forcing the blockade. He had everything to gain—dash, glory, fame—if he succeeded, perquisites untold, and perhaps fortune, from the "fifty first-class passengers" he might rescue before the imminent storm of war soon to break on them in ruin and pillage, as they feared.

All such blockade running is "paraded as a triumphant achievement" says Upton (Maritime Prize and War, page 289), and the personal vanity of the captain was also appealed to, in addition to his pocket.

In the light of these considerations there was therefore the usual motive of profit and gain, and in this case of untold profit for the steamer, exceeding possibly the

whole year's business. In addition we have seen there were other apparent strong motives.

In this connection we refer to the recent case of the steamship *The Adula* (89 Fed. Rep., 351), just decided, where the *motive* actually alleged and pleaded as an excuse of blockade running by the steamship was that she was going to take away refugees from Guantanamo, Cuba; but the court condemned her on principle and authority.

EFFECTIVENESS OF SAN JUAN BLOCKADE.

The following assignments of error, from 1 to 14, set forth the view contended for by the United States bearing on the question whether the blockade of San Juan was an "effective blockade" on July 17, 1898, and capture of the *Olinde Rodrigues* a lawful capture.

EFFECTIVE BLOCKADE.

1. The district court erred in decreeing a restitution of the steamship *Olinde Rodrigues* to the claimant on the ground that the blockade of San Juan was not an "effective blockade" on the 17th of July, 1898, at the time of the capture of the said steamship by the United States cruiser *New Orleans*, while attempting to enter the port of San Juan.

2. The district court erred in not holding and decreeing that the blockade of San Juan on the 17th of July, 1898, was an effective blockade, and that the steamship *Olinde Rodrigues* was captured while attempting to break the blockade of San Juan on the 17th of July, 1898, and in not decreeing the condemnation of the steamship *Olinde Rodrigues* as a lawful prize of war.

3. The district court erred in finding "that the cruiser *St. Paul*, a vessel of great speed, had been upon that station long before the proclamation of the blockade, and though not comparable in armament with the *New Orleans*, she was equally efficient for blockading purposes, and the *Yosemite* was but little less so, from which it is fairly deducible that the proclamation of the blockade did not induce the sending thither of any force to make it effective, and that the single cruiser upon that station, from a date long anterior to the proclamation, had other duties and was intended for other purposes than merely to maintain a blockade."

4. The district court erred in holding and finding that only "through an error of judgment the master of the *Olinde Rodrigues* concluded that there was no effective blockade of the port (of San Juan) and attempted to go into the port" on the 17th of July, 1898.

5. The district court erred in holding "that there was not an effective blockade of the port of San Juan within the spirit and intent of the law of nations" on the 17th of July, 1898.

6. The district court erred in holding "that there would have been no attempt to enter if such (effective) blockade had existed at San Juan."

7. The district court erred in not holding that the blockade of San Juan on the 17th of July, 1898, was an actual and effective blockade within the meaning of the proclamation of the President of the United States dated the 27th day of June, 1898.

8. The district court erred in not holding and finding specifically as fact that the actual capture of the steam-

ship *Olinde Rodrigues* was made by the United States cruiser *New Orleans* on the 17th of July, 1898, while heading for San Juan and attempting to enter the port of San Juan, after being duly and actually notified of the blockade of San Juan and warned off of the port of San Juan on the 5th of July, 1898, by entry in her log, by the United States steamship *Yosemite*, and after warning and signal to stop by the United States cruiser *New Orleans* on the morning of the 17th of July, 1898, and while defying and disobeying both such repeated warnings and signals.

9. The district court erred in not holding that the fact of the capture of the steamship *Olinde Rodrigues* while attempting, on the 17th of July, 1898, to enter San Juan, after warning on the 5th of July, 1898, by entry in her log, by the United States ship *Yosemite*, was a conclusive demonstration that the blokade of San Juan was an "effective blockade."

10. The district court erred in not holding that an "effective blockade" was a blockade practically effective, and that the actual capture of the steamship *Olinde Rodrigues* on the 17th of July, 1898, by the United States cruiser *New Orleans*, while attempting to enter the port of San Juan, after having been warned off San Juan on the 5th of July, 1898, by the United States steamship *Yosemite*, and after warning and signal to stop by the United States cruiser *New Orleans* on the morning of the 17th of July, 1898, and while disobeying and defying these repeated warnings and signal, was a demonstration that the blockade of San Juan was practically effective.

11. The district court erred in holding that it was as matter of fact not manifestly dangerous for the *Olinde Rodrigues* to attempt to enter San Juan on the 17th of July, 1898, when she was captured by the United States cruiser *New Orleans*, after a warning, entered in her log, by the United States steamship *Yosemite* on the 5th of July, 1898, and after the warning and signal to "heave to and stop" of the United States cruiser *New Orleans* on the morning of the 17th of July, 1898, both of which warnings and signal were disobeyed and defied by the steamship *Olinde Rodrigues*, and when disobeying and defying such repeated warnings the *Olinde Rodrigues* was actually captured.

12. The district court erred in holding that "a blockade fleet," "a number of vessels," "arc of circumvallation"—some or all of these conditions must exist to make a blockade effective.

13. The district court erred in holding that one war ship of type, speed, armament, and range of guns of the United States cruiser *New Orleans*, that is, an armored modern cruiser, of 22 knots speed, 32 guns, and 6½-mile range of guns, shooting rifle shells, was not in fact an effective blockade of the port of San Juan, with its single entrance, on the 17th of July, 1898.

14. The district court erred in holding that it "requires, as matter of law, more than one modern war ship of the type, speed, armament, and range of guns of the United States cruiser *New Orleans*, that is, a modern armored cruiser, of 22 knots of speed, 32 guns, and 6½-mile range of guns, shooting rifle shells, to blockade San Juan, a port of a single entrance."

THE FACTS AS TO THE BLOCKADING FORCE AT SAN JUAN.

The blockade of San Juan was not proclaimed by the President until the 27th of June, 1898.

The language of the proclamation is as follows:

> * * * The United States of America has instituted, and will maintain, an effective blockade of all the ports on the south coast of Cuba from Cape Frances to Cape Cruz, inclusive, and also the port of San Juan in the island of Porto Rico.

The blockade was not of *the coast* of Porto Rico, but only of the *port of San Juan*, a small town of about 20,000 inhabitants, on the northern coast of Porto Rico, with a single entrance. (See chart A, Porto Rico.)

For the first seventeen days of the blockade, i. e., from June 27 until the 14th day of July, 1898, the blockading vessel was the United States steamer *Yosemite*, formerly the merchant steamer *El Sud*, of the Morgan Line, which had been temporarily made an auxiliary cruiser, with rapid-firing guns and 6-pounders, all of very small range of 3½ miles, the *Yosemite* having a maximum speed of 15½ knots. (Emory, fol. 240, 241, 244.)

During the time the *Yosemite* was blockading the port she ran the armed transport *Antonio Lopez* ashore 6 miles from San Juan (Emory, fol. 248) and gave a number of neutral vessels official notice of the existing blockade, warning off a number from the port, and actually wrote into the log of the *Olinde Rodrigues*, off San Juan, the official warning of blockade of San Juan on the 5th of July, 1898. (Burns, fol. 261, 263; log, fol. 93.)

On the 14th day of July, 1898, the United States armored cruiser *New Orleans*, the fastest vessel in the United States Navy and the most recently built, with a maximum speed of 22 knots, and with a full armament of rifle guns at long range of 5½ sea miles or 6½ geographical miles, firing explosive shells, was sent to take the place of the converted cruiser *Yosemite*. This assignment of the *New Orleans* to the blockade of San Juan was vastly strengthening it, and more than quadrupling its effectiveness by reason of her great speed and range of guns. The *New Orleans* was continuously on the blockade station, blockading the port of San Juan from the 14th of July until the time of the capture by her of the *Olinde Rodrigues* at 8.12 a. m. on the morning of Sunday, July 17, 1898. It does not appear that any vessel succeeded in running the blockade while the *New Orleans* was blockading San Juan; nor does it appear that the French Government or any other neutral power ever gave notice or warning or complained in any way that the blockade of San Juan was not an effective blockade.

It appears by the testimony of Lieutenant Rooney, fol. 322, navigator of the United States cruiser *New Orleans*, and by the Chart A, accompanying his testimony, in evidence, that the cruiser *New Orleans* was constantly in motion in front of Port San Juan, directly off the port, "between 6 and 7 miles from Morro;" that on the morning of the capture, the 17th of July, she was, at 4.50 a. m., to the north and west of the port, about 10 miles off shore; that she went east, and at 5.15 a. m. was due

north of Morro. At 6.50 she was to the northeast of Morro, after having gone east; that at 7.50 she had come south 3 miles, and was to the northeast of Morro watching a Swedish bark that was hovering; that from this point she saw the *Olinde Rodrigues* to the north and west of San Juan and chased her until the *New Orleans* reached a point C on Rooney's Chart A, about $7\frac{2}{3}$ miles to the northeast of Morro and 6 miles off shore, where she fired the shell at the *Olinde Rodrigues*, about 5 miles to westward, then attempting to enter San Juan, being north and west of San Juan, about the same distance off shore and heading directly in for San Juan.

This evidence is also confirmed by the concurrent testimony of Captain Folger, Lieutenant Rooney, Nelson, officer of the deck, Ensign Blakeley, and others, of the United States cruiser *New Orleans*, and by the telegraphic observer, Lara, then in the tower of Morro Castle, San Juan.

It is true that the master of the *Olinde Rodrigues* says that as soon as he saw the cruiser *New Orleans* he came toward her, but the log of the *Olinde Rodrigues* shows he ran 20 minutes after he saw the cruiser before he turned toward her, and the testimony of all the officers and observers on the *New Orleans* is to the effect that he did not come to the cruiser *New Orleans* as soon as he saw her, but on the contrary continuously defied the signal to "stop instantly and heave to," and continued on his course until after the shot was fired, and this testimony is confirmed by the steward of the *Olinde Rodrigues*, Girny, and Telegraphic Observer Lara, in Morro, who

testified that she did not change her course and go to the *New Orleans* until after the shot was fired.

The testimony also shows that the United States cruiser *New Orleans* has guns with a range of 5½ sea miles or 6½ geographical miles, firing explosive rifle shells, the most destructive of missiles, in addition to solid shot, and that the first shell fell in front of the *Olinde Rodrigues*, and that they were loading and preparing to fire again when the *Olinde Rodrigues* turned and came toward the cruiser.

(For full detailed statement of the evidence on these points see propositions two, three, four, five, and six under first main head of this brief on "VIOLATION OF BLOCKADE" supra.)

The positions taken by the United States in the fourteen assignments of error (1 to 14) on the effectiveness of the blockade are summed up in the following six propositions:

I.

TO CONSTITUTE AN "EFFECTIVE BLOCKADE" OF SAN JUAN IT IS ONLY NECESSARY THAT THERE SHOULD BE A NOTIFICATION OF BLOCKADE AND AN ACTUAL FORCE PRESENT RENDERING INGRESS OR EGRESS TO THE PORT DANGEROUS.

EFFECTIVE BLOCKADE (LAW).

(1) We submit that an "effective blockade" under the treaty of Paris and the proclamation of the President is a blockade—

(*a*) When the blockade is known.

(*b*) Where there is present an actual blockading force.

(c) Where there is danger to those attempting to break it.

These elements are all that are necessary under the consensus of opinion in modern international law, especially that of England, America, and Germany.

The declaration of Paris (1856) was to correct the abuse of the early part of the century of the so-called paper blockades, or cabinet blockades, where *extensive coasts* were put under blockade by proclamation, without the presence of any force or an inadequate force, which subjected neutrals innocently departing and entering (no force being present) to capture 100 miles or more away from the port during same voyage.

The following authorities fully illustrate this position, for the law of blockade is very rigorous:

> A vessel which has succeeded in effecting a breach of blockade is not exonorated by her success from the consequences of her illegal act. If a ship that has broken a blockade is taken in any part of the same voyage, she is taken *in delicto*. The offense is not terminated until she reaches the end of the voyage, and the voyage is understood to include her return. (Hall's Int. Law, 736.)

Woolsey Int. Law, page 351:

> It is for this reason that a neutral should know of the blockade, and that it should be enforced at the port by an adequate force, else neutrals might be deceived into coming out or going in, and afterwards, before the voyage is over, incur the penalty of seizure and confiscation for an offense not knowingly committed.

As an illustration of this paper blockade, "France declared the British Isles to be in a state of blockade at a

time when she dared not send a single squadron out to sea for fear of capture by the victorious British navy." (Note Manning's Law of Nations (Amos ed.), Bk. V, ch. X.)

Lawrence International Law, page 577 (Cambridge, 1895):

> In such a case it would be manifestly unjust to seize, 500 miles away from Liverpool, at the end of her voyage, a ship that against that mere proclamation had left Liverpool, where no French ship was or had been blockading the port.

It was against such blockades that the declaration of Paris was directed, and it now has a clear and well-settled meaning in English and American jurisprudence. But never in the history of international law has any vessel attempted to plead that the blockade was not *effective* when as a matter of fact she was actually captured by the cruiser in attempting to enter a blockaded port after warning *previously* entered in her log by a cruiser at that port of the blockade; and this is the case at bar.

In Snow's International Law, page 153 (Washington, Government Printing Office, 1898), the principle is thus stated:

> What constitutes an effective blockade? Halleck says:
>
> "It is now a well-settled principle of international jurisprudence that a lawful maritime blockade of a port requires the actual presence of the blockading force. A mere proclamation of notification of one belligerent that such a port of the other belligerent will be blockaded at such time, and thus

> closed to neutral commerce, is not sufficient to constitute a legal blockade; the force must be actually present at the entrance to the port, or sufficiently near to prevent communication. Nor is the mere presence of the hostile force sufficient of itself to make the blockade a legal one; it must not only be actually present, but it must be large enough to prevent communication, or, at least, *to render it dangerous* to attempt to enter the port."

In Wheaton's International Law, third English edition, page 673, it is said, referring to the fourth article of the Declaration of Paris:

> This merely puts into a formula what was already a principle of the law of nations, but it leaves the often-disputed question of what is a "sufficient force" in the same state as before. This is in reality more a question of fact than of law, and it seems almost impossible to lay down any precise rule defining in all cases what is a sufficient force.

Admiral Dahlgren says in his Maritime International Law (Boston, 1877), page 44, after stating the rule of the armed neutrality of 1780:

> In a debate in Parliament Lord Granville said the force on the spot must be sufficient "to make it very difficult for vessels to obtain egress and ingress." The prime minister (Lord Russell) thought that "evident danger of entering or leaving" constituted an effective blockade. The French minister of commerce (Rouher) says an effective blockade must "prevent approach without exposure to a certain danger." Lord Brougham is more precise; blockade "to be effective, not necessary to render access impossible, but sufficient that it pre-

clude the existence of any reasonable chance of entrance."

(P. 49.) The treaty with Haiti was by Mr. Lincoln's Administration, in 1864, and therefore expresses the views of the United States, after experience in the rebellion, and may be summed thus:

First. Declines to define blockade at all. * * *

The omission of the definition of what constitutes blockade exhibits a tendency to decline acceding to the ample concessions formerly made to neutrals, and to sustain the belligerent rights more strongly than the prevailing fashion, thus inclining to the British decisions. And our prize courts showed a like tendency. * * * Not that the United States ever contemplated recourse to blockades not effective, but that they would not commit themselves to more than plain right required; perhaps a clearer perception of what the interests of the country might require.

The actual force necessary to maintain an effective blockade varies with the circumstances. A treaty between France and Denmark, concluded in 1742, required that the entrance of a port should be closed by at least two vessels, or by a battery on shore. A later treaty between Holland and the Two Sicilies required the presence of at least six vessels at the distance of a little more than gunshot from the port, or the existence of batteries on shore, so placed that entry could not be made, except by passing under the guns of the besieger.

The declaration of Paris, in 1856, prescribed:

Blockades to be obligatory are to be effective—that is to say, maintained by a sufficient force to shut out the access of the enemy's ships, and other vessels in reality.

The United States has practically become a party to this declaration, but have, in the instructions issued during the war with Spain, adopted a more satisfactory definition of an effective blockade. This definition reads as follows:

> 2. A blockade to be effective and binding must be maintained by a force sufficient to render ingress to or egress from the port *dangerous*.

Hall says further on this subject:

> Provided that access is in fact interdicted, the distance at which the blockading force may be sustained from the closed port is immaterial. Thus Buenos Ayres has been considered to be effectually blockaded by vessels stationed in the neighborhood of Montevideo; and during the Russian war in 1854 the blockade of Riga was maintained at a distance of 120 miles from the town by *a ship* in the Lyser Ort, a channel 3 miles wide, which forms the only navigable entrance to the gulf. (Hall, Int. Law, p. 726.)
>
> A blockade whose establishment has been regularly notified to neutral governments must be presumed to continue until notification is given by the blockading government of a discontinuance, unless clear proof to the contrary can be shown.

Professor Snow's work is the authority recognized and acted on by the Navy Department of the United States, under whose direction this volume has been recently published.

It is sustained by principle and authority.

Speaking of the Declaration of Paris, Professor Walker, of Cambridge, England, writes:

> This broad principle is, by reason of its very generality, better suited than mere detailed rules as to

the condition of maritime warfare to-day. (Walker, Science Internat. Law, 1893, pp. 517, 518.)

To the same effect is Hall's International Law:

SEC. 260. The doctrine with regard to the proper maintenance of a blockade, which has been laid down by the *English and American* courts, which is approved of by English and American writers, and which is embodied in the *policy of both countries*, requires that a place shall be "watched by a force sufficient to render the egress and ingress *dangerous*."

NOTE.—The Franciska, Spinks, 115; Phillimore, iii, sec. ccxciii–ccxciv; Bernard, 245; Kent, Lect. vii; Wheaton, pt. iv, chap. iii, sec. 28; Mr. Mason's instructions to the naval forces of the United States, 1846, quoted by Ortolan, ii, 343. Among continental publicists M. Bluntschli accepts and repeats the English doctrine, sec. 829. (Hall's Int. Law (1895), sec. 260, pp. 725–726.)

It is impossible to fix with any accuracy the amount of danger in entry which is necessary to preserve the validity of a blockade. It is for the prize courts of the belligerent to decide whether in a given instance a *vessel captured* for its breach *had reason to suppose it to be nonexistent*. (Idem, p. 726.)

In case at bar the *Olinde Rodrigues* had actual warning entered on her log on July 5, and saw and defied the cruiser *New Orleans* at the time of capture on July 17.

This view of the maintenance of blockade may be questioned on the Continent, but it is the policy and practice of England, Germany, and America since declaration of Paris.

Hall, in referring to this, says (Hall's International Law, p. 728):

The opinions held by the majority of modern continental writers as to the conditions under which

a blockade is efficiently maintained differ in several important respects from the principles which guide the practice of England and the United States. They may perhaps be summarized as follows: The immediate entrance to a port must be guarded by stationary vessels in such number as either to render entrance impossible, or at least to expose any ships running in to cross fire from the guns of two of them. Any accidental circumstance which makes it temporarily possible to go in puts an end to the blockade, and justifies a vessel in attempting to enter. As for three-quarters of a century by far the most extensive experience in blockades has fallen to the share of England and the United States, these opinions, whatever their abstract merits, labor under the disadvantage of being inconsistent with the most authoritative usage upon the subject. They are also much more rigid than the principles embodied in the declaration of Paris and accepted by the great majority of civilized nations. It is hardly necessary, therefore, to inquire upon what ground they are stated to represent existing law. The signatory powers of the declaration of Paris, which is perfectly in harmony with English doctrine, were satisfied with declaring that "blockades in order to be binding must be effective—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy."

It may be remarked, apart from reference to existing law, and apart also from all question whether blockades ought to be permitted at every place where they are now lawful, that the experience of the civil war in America has proved the use of steam to assist powerfully in their evasion, as to render it unwise to shackle the belligerent with too severe restrictions. If it is wished altogether to deprive

blockades of efficacy, it would be franker and better to propose to sweep them away altogether. (Hall, International Law, pp. 728, 729, 730.)

To the same effect is Lawrence, International Law (Cambridge, 1895), where Professor Lawrence says:

> The declaration of Paris has a clear, practical meaning:
>
> Blockades to be binding must be effective. The words which follow require an impossibility if they are taken in the strictest literal sense. They define an effective blockade as one "maintained by a force sufficient to prevent access to the coast of the enemy;" and a small boat might frequently pass through the most numerous and efficient squadron. It is, however, clear from explanations given by the ministers of the various countries which signed the declaration that nothing further was intended than the assertion of the principle that there must be a *real danger* in any attempt to pass through (Wheaton, International Law, Dana's ed., note 233; Lawrence, International Law, p. 578, sec. 269, Cambridge, 1895).
>
> We are often told, for instance, that the blockading vessels must be stationary, sometimes that they must be anchored, and even that the approaching ship must be under a cross fire of at least *two* of them. These statements are among the curiosities of the literature of international law, but they have no connection with the hard facts of international relations. The Institute de Droit International has not embodied them in its maritime code; and it may safely be said that the accepted authorities of effective blockade do not go beyond the wording of the fourth article of the declaration of Paris. (Lawrence, International Law, p. 599, sec. 269, Cambridge, 1895.)

What a sufficient force is can not be determined with logical rigor. It may be said to be such a force as will involve a vessel attempting to pass the line of blockade in considerable danger of being taken. (Woolsey's Internat. Law, 343.)

In International Law, Woolsey (p. 344), it is stated:

> Dr. Lushington remarked that the maintenance of a blockade must always be a *question of degree*—of the degree of danger of ships going into or leaving a blockaded port. No force could bar the entrance to an absolute certainty; vessels may get in or out during the night or fogs or violent winds or occasional absence. It is most difficult to judge from numbers alone. And adds, that in no case a blockade was held to be void when the blockading force was on or near the place of entry or visit.

That the Declaration of Paris was to correct "paper blockades" or "cabinet blockades" of the early century, where either no force guarded an interdicted port, or a war ship only occasionally appeared there, and that that was the understanding at the time both of England and the United States, thereafter invited to join therein, also fully appears in the last edition of Hall's International Law, Oxford, 1895, page 730, note, where the author says:

> With reference to the meaning of the Declaration of Paris, Lord Russell, in 1863, wrote as follows: "The Declaration of Paris was, in truth, directed against what were once termed 'paper blockades;' that is, blockades not sustained by any actual force, or sustained by a notoriously inadequate naval force, such as an occasional appearance of a man-of-war in offing, or the like. * * * The interpretation,

> therefore, placed by Her Majesty's Government on the declaration was that a blockade, in order to be respected by neutrals, must be *practically effective.* * * * It is proper to add that the same view of the meaning and effect of the articles of the Declaration of Paris, on the subject of blockades, which is above explained, was taken by the representative of the United States at the Court of St. James (Mr. Dallas) during the communications which passed between the two Governments some years before the present war, with a view to the accession of the United States to the declaration." Lord Russell to Mr. Mason, February 10, 1863, ap. Bernard, 293. (Hall's International Law, p. 730, note.)

It appears, therefore, that the key to this question is that an effective blockade under the Declaration of Paris is one that is "practically effective."

The facts in this case show it to be "practically effective," by capture of the *Olinde Rodrigues after* warning by United States steamer *Yosemite*, entered in the log book of the *Olinde Rodrigues* July 5, and *after* her defying signals to her to stop, July 17, while running the blockade into San Juan.

This *practical* effectiveness has always been the test of a legal blockade.

In *The Mercurius* (1 Rob., 80, 84) Sir William Scott very tersely and with a robust common sense thus sums up this question:

> It is said this passage to the Zuyder Zee was not in a state of blockade, *but the ship was seized immediately on entering it, and I know not what else is necessary to constitute a blockade.* The powers who formed the armed neutrality in the last war understood blockade in this sense; and Russia, who was

> the principal party in that confederacy, described a place to be in a state of blockade when it is dangerous to attempt to enter it.

It was surely dangerous for the *Olinde Rodrigues* to attempt to enter San Juan on July 17 when she saw the *New Orleans* and defied the signal to stop, and the exploding shell of the cruiser *New Orleans* fell just in front of her when she was captured.

And in *The Frederick Molke* (1 Rob. Rep., 86–88), Sir William Scott says again:

> For that a legal blockade did exist results necessarily from these facts, as nothing further is necessary to constitute blockade than that there should be *a force* stationed to prevent communication and *a due notice or prohibition given to the party.* * * *
>
> For what is the object of blockade? Not merely to prevent an importation of supplies; but to prevent export as well as import; and to cut off all communication of commerce with the blockaded place. I must, therefore, consider the act of egress to be as culpable as the act of ingress, and the vessel on her return still liable to seizure and confiscation.

The decisions of our own courts during the civil war are to the same effect, requiring a *practical* efficiency only.

> All that was necessary was that an adequate force was assigned and stationed off these ports at the time of the egress from them of the above-named vessels, so as to render the ingress or departure of the vessels to or from the ports *dangerous.* There *need not be a close cordon of vessels* surrounding the places at all times, so as absolutely to command all approaches to the ports from without or departure from

them from within. The blockade must, however, be so sustained by *competent forces* as to render it *efficient* to all ordinary intent and apprehension. This, of course, admits of the accidental absence of blockading vessels from stress of weather or other contingencies, and will also dispense with the employment of the more active and rapid services of steam vessels in such accumulation of watchful forces as is sometimes exacted when ships moved by canvas only are used. What the law demands is the allotment and stationing of that amount of force for the service which shall render it physically hazardous for other craft to evade the blockade. (The *Sarah* (case No. 12352), 21 Fed. Cas., 462, 470; Blatchford Prize Cases, 69.)

In the same spirit the circuit court of New York held that the fact of capture of a brig upon arrival at the port demonstrated that the blockade was *effective*. (*Hallie Jackson*, Blatchford Prize Cases, 41; 11 Federal Cases, 290, 292.)

So the Supreme Court of the United States, following Nelson in his blockade of Genoa, quoted *infra*, says:

> We have already held that a blockade once established and duly notified must be presumed to continue until notice of discontinuance in the absence of positive proof of discontinuance by other evidence; and we do not think that the testimony of the master and mate *that they saw no blockaders* when entering or leaving Calcasieu Pass supplies such proof. * * *
>
> It goes to establish guilty intent. *So, too, the endeavor to escape* from the *Bainbridge*. No such attempt would have been made had the officers of the *Baigorry* been unconscious of any infringement of the blockade. (The *Baigorry*, 2 Wall., 480.)

> A blockade once regularly proclaimed and established will not be held to be *affected* by continual entries in the log book, supported by testimony of officers of the vessels seized, that, the weather being clear, no *blockading vessels were to be seen* off the port from which the vessels sailed. (The *Andromeda*, 2 Wall., 481.)

In the case at the bar the *Olinde Rodrigues* saw the cruiser and, defying signal, endeavored to escape until brought to by shot on July 17, after she had been warned off the port on July 5.

It is argued that all the previous American cases and American views on "effective blockade" are erroneous, because it is claimed the United States accepted the Declaration of Paris for the first time in the war with Spain. This is a mistake. In Wharton's International Law, Dig., Vol. III, p. 379, sec. 361, it is stated:

> As early as April 24, 1861, when Mr. Lincoln's administration had only been in office six weeks, but when it was already apparent that the secession movement then begun would speedily have possession of most of the ports of the Southern States, Mr. Seward addressed a circular to the ministers of the United States and Europe in which he declared the adhesion of the United States Government to the rule that blockades in order to be binding must be effective; that is to say, maintained by a force sufficient to really prevent access to the coast of the enemy. (U. S. Dip. Correspondence, 1861, 34.)
>
> When President Lincoln proclaimed, as he did on the inception of the civil war, a blockade of the Southern coast, the proclamation was followed by an announcement to France and England that the

> blockade would be effective in the above sense; and it is important to observe that enormous as were the profits to be gained by blockade running and doubtful as was at least the friendliness of certain European courts toward the United States, not one of the maritime powers of Europe complained that the blockade was not effective.

It is thus clear that all of the prize cases of the civil war decided in the courts of the United States were decided in view of and in application from the American standpoint of the Declaration of Paris. It is also clear that all of the positions taken by the United States in their diplomatic correspondence during the civil war were after their adhesion to the Declaration of Paris, as this Government understood it. To say that the decided cases in this country are in conflict with the Declaration of Paris, and rendered before its acceptance by the United States (as the district court seems to hold), is an historical error which has gravely affected the court below.

This court has recently again announced that on the sea British and American jurisprudence alone govern it.

> Indeed, we have had frequent occasion to hold that the maritime usages of foreign countries are not obligatory upon us and will not be respected as authority, except so far as they are consonant with the well-settled principles of English and American jurisprudence. *The John G. Stevens*, 170 U. S., 113, 126, and cases cited; *The Elfrida*, 172 U. S., 203.

It is clear, therefore, as matter of legal principle that an "effective blockade" is one that is "practically effective" and dangerous to a vessel attempting to enter, and

that in modern international law there are no fixed arbitrary rules determining the number or location of the blockading force. The district court erred, therefore, in holding that as matter of law there could be no legal blockade without a "fleet of vessels," "a squadron," or "several vessels."

II.

IT IS NOT NECESSARY TO CONSTITUTE AN EFFECTIVE BLOCKADE OF A PORT OF A SINGLE ENTRANCE TO HAVE MORE THAN ONE MODERN CRUISER, IF THE PRESENCE OF THAT WARSHIP RENDERS IT DANGEROUS IN FACT FOR THE NEUTRAL SHIP TO ENTER THE PORT.

This proposition is a corollary of proposition first. The principle has been recognized and illustrated repeatedly in the history of international law.

In the Principles of International Law (1895, Lawrence, M. A., LL. D., Cambridge, England), the general principle is stated:

> Maritime law gives to a belligerent the right to prevent access to or egress from a port of his enemy by stationing A SHIP or a number of ships in such a position that they can intercept vessels attempting to approach or leave the port in question (p. 576, sec. 269).

We have several illustrations of the principle:

> In the Crimean war the port of Riga was blockaded by a *single British vessel* stationed 120 miles from the town in a narrow channel which formed the only navigable approach to the place. (Lawrence, Internat. Law, p. 583, sec. 272, Cambridge, 1895.)

Other writers state it as follows:

> During the Russian war in 1854 the blockade of Riga was maintained at a distance of 120 miles from the town by a ship in the Lyser Ort, a channel 3 miles wide which forms the only navigable entrance to the gulf. (Hall's International Law, p. 726; Snow's International Law, p. 154.)

The manifest reason of the effectiveness of this blockade is that even with small range guns at that time this channel or entrance to the port could be commanded by one ship.

An even stranger case occurred between our own Government and Great Britain after the United States had formally expressed acceptance of declaration of Paris in the civil war.

> The *Niagara*, blockading Charleston, had been sent away to intercept a cargo of arms expected at another part of the coast, and the harbor remained open for at least five days. Lord Lyons took it for granted that an interruption had occurred, but the Government of the United States, in view of the effect understood by it to flow from a general notification, refused to admit that any cessation had taken place. (Hall's International Law, 727.)

Here even with only *one* blockading vessel before Charleston the United States refused to admit even that an interruption had occurred by temporary absence.

Professor Walker, of Cambridge, gives a fuller statement of this case.

> On May 11 in that year (1861) the *Niagara* appeared off Charleston and continued warning off neutral ships until 15th, when she left. On the 28th

the *Minnesota* took up the vacated position. In face of these facts Mr. Seward contended that the blockade of the port of Charleston was carried into effect on the 11th and had neither been abandoned, relinquished, nor remitted. "I hasten," he wrote Lord Lyons, "to express the dissent of this Government from the position which seems to be assumed by your note that that temporary absence impairs the blockade and renders necessary a new notice of its existence. This Government holds that the blockade took effect at Charleston on the 11th day of this month and that it will continually be in effect until notice of the relinquishment shall be given by proclamation of the President of the United States." (Walker's International Law, 518–519, Cambridge, 1893.)

It is to be noticed here that the question raised was whether the absence of any vessel from the 11th to the 28th of May was an abandonment.

The fact that there was only *one ship* admittedly present before the interruption was not questioned by the British Government as an *effective blockade*. It was taken for granted as the basis of all the correspondence that one ship—the *Niagara*—had established and previous to her departure was in herself sufficient to maintain an "effective blockade" of Charleston. This case is of primal importance because the United States had just then, in April, 1861, announced its acceptance of the Declaration of Paris (see *infra*) and was interpreting it in her action and positions assumed.

In the case of *The Brilliante* (2 Bl., 635, 678, 679), it appears that a single United States ship of war blockaded

one of the mouths of the Mississippi River, the court stating:

> In approaching New Orleans with a cargo from Sisal she found the United States ship of war *Brooklyn* blockading the mouth of the Mississippi River at Pass a Loutre, and was by the officer of that vessel informed of the blockade and forbid to enter. * * *

It appeared in this case that the commander of the *Brooklyn* gave to a part owner of the vessel and cargo, who was on board, a letter to the commander of another ship of war farther along the coast; that on leaving the *Brooklyn* the *Brilliante* started along the coast in the direction of the other war ship, but instead of seeking that vessel evaded her and went to New Orleans by way of Lake Ponchartrain.

The following statement appears in Bernard's "Neutrality of Great Britain during the American Civil War," pages 239–40:

> Savannah was blockaded on the 28th of May [1861], by the *Union*, a small steamer of 600 tons, carrying five guns and thirty men, which had been chartered by the month for this service. She disappeared on the 1st June, leaving the port open, but returned on the 10th, and there was no subsequent intermission.

Page 241 refers also to the case of the *Brooklyn* at Pass a Loutre, in a letter from the British consul at New Orleans to Lord Russell, from which it appears that the steamship *Powhatan* was then the nearest ship on the blockade at Southwest Pass, 28 miles distant.

Thus on principle and authority *one ship* can, as matter of law, constitute an effective blockade of a *port*

with a single entrance, or of one of the entrances of a port having more than one entrance. The only question that arises in such a case is whether such blockade is "practically effective." The district court therefore erred in holding as matter of law that one war ship could not be an effective blockade of such a port with a single entrance.

III.

A MODERN CRUISER OF THE TYPE, SPEED, ARMAMENT, AND RANGE OF GUNS OF THE UNITED STATES CRUISER "NEW ORLEANS," I. E., AN ARMORED MODERN CRUISER OF 22 KNOTS MAXIMUM SPEED, 32 GUNS, AND 6½ MILES RANGE OF GUNS, SHOOTING RIFLE SHELLS, WAS IN FACT AN "EFFECTIVE BLOCKADE" OF THE PORT OF SAN JUAN, WITH ITS SINGLE ENTRANCE, ON JULY 17, 1898.

The facts of the blockade are that the *Yosemite*, a converted auxiliary cruiser, formerly the *El Sud*, of the Morgan Line (Burns, fol. 259), a converted merchant ship (Emory, fol. 240), blockaded the port until July 14, 1898.

The speed of the *Yosemite* was 15½ knots (Burns, fol. 261). The armament of the *Yosemite* was 18 guns, all small with greatest range of 3½ miles (Emory, fol. 244). Ten 5-inch rapid-firing guns; six 6-pounders; two 1-pounders (Emory, fol. 240).

Afterwards, on July 14 and thereafter, the port of San Juan was blockaded by the United States armored cruiser *New Orleans*, thereby quadrupling the efficiency of the blockade.

Her maximum speed was 22 knots (Folger, fol. 160). Her armament was *32 guns*. Six 6-inch breech-loading rifles; four 4.7-inch breech-loading rifles; ten 6-pounders; four 1½ inch corresponding to 3 pounds; four 3-pounders in the tops; four 37-millimeter automatic guns (Rooney, fol. 311).

The range of her guns was 11,000 yards, or 5½ sea miles, 6½ statute miles (Rooney, fol. 340). It will thus be seen that the blockade was vastly strengthened and rendered fourfold more effective by the armored cruiser *New Orleans*. There is no evidence that any vessel ever eluded her in that blockade either in ingress or egress. The elements of this effectiveness were—

(1) Standing still, and commandiug by her rifle shells a circle of 13 miles diameter, the *New Orleans* was, in herself, "an arc of circumvallation" of old-time war ships. Stationed 6 miles off San Juan she would command the port and its approaches by her guns, and no other vessel was necessary. It would take at least 6 war ships of the early part or middle of the century, with their small range of guns, to equal her practical efficiency, if they were stationed around the port. So, also, when the *New Orleans* moved, covering the broad path of 13 miles by her guns alone, she was a great naval scythe, or mowing machine, sweeping the waters in front of San Juan.

(2) By night she could, by electric search lights, illuminate the sea for 10 miles.

(3) She could not, as sailing war ships of the early century, be blown away by winds or drifted off by currents.

(4) This one modern armored cruiser, the *New Orleans*, was also in cost to the belligerent more than twice the cost of a fleet of frigates of the old naval warfare, both in equipment, manning, and maintenance.

(5) It is to be remembered also that the *port* of San Juan was blockaded, not the coast; and that San Juan has only one entrance which she was blockading. (See Plat A, frontispiece, Porto Rico.)

Six blockading war ships of the type mentioned by Sir William Scott in the *Nancy* (1 Dodson, 423), i. e., the British brig *Blazer* and the British schooner *Pax*, could not so command the port or the sea, either stationary or moving as a fleet, in front of San Juan.

In fact, the cruiser *New Orleans* was a scientific modern unit, representing in herself the effectiveness of an old-time fleet or squadron. In the same way that she could herself have caught and fought single handed and destroyed such a fleet, in the same way, as a blockading force, she could, by her long range of guns, be even more effective and more dangerous than such a fleet as a blockading force.

Having nearly double the range of guns as the *Yosemite*, she covered four times the area by her guns. In blockading efficacy she was by this greater range of guns and vaster speed equal to more than four war ships of the type of the United States auxiliary cruiser *Yosemite*, formerly a merchant vessel, whom she succeeded in blockade of San Juan on the 14th of July, evidently with a view by United States to make fully effective the blockade of San Juan by its fastest cruiser with long-range guns.

Nor will it do to say that increased speed of steam vessels in running the blockade does away with this effectiveness of the concentration of many units in the single modern unit of the *New Orleans*. Increase of steam power in the blockade runner may offset, in a measure, increase of speed in the blockader; but the *increased range of guns* in the blockading cruiser can not be offset by anything in the blockade runner, and it remains true that the modern cruiser *New Orleans* covering a circle of 13 miles by her guns off San Juan commands the same area as six war ships of the old type stationed in a circle around that port of San Juan.

Moreover, when we consider the additional factor of the phenomenally great speed of the *New Orleans* in this case, a maximum speed of 22 knots, the practical efficiency becomes even greater than an old-time fleet of sailing vessels. Standing still, the *New Orleans* covered a circle of 13 miles with her guns. If we add her speed to the range of her guns, the result is as follows:

In six minutes she could cover any point on a circle of 17 miles diameter.

In ten minutes she could cover any point on a circle of 19 miles diameter.

In fifteen minutes she could cover any point on a circle of 23 miles diameter.

In thirty minutes she could cover any point on a circle of 33 miles diameter.

In one hour she could cover any point in a circle of 53 miles diameter.

This is a terrible omnipresence, not dreamed of in

the naval warfare of a century or half a century ago, and not possible to a whole fleet or squadron of that period.

It was this sudden omnipresence, by reason of speed and range of guns combined, that startled the *Olinde Rodrigues*, unmindful of the full meaning of this modern scientific unit that represented an old-time fleet in effectiveness, as the *New Orleans* swooped down upon her even from the northeast as an eagle from its commanding perch, and seized her, defiantly after warning, running the blockade from the northwest.

This concentration of power in the unit is the great feature of this scientific age. This doctrine of modern equivalents of the one for the many is in force in every department of life and action. One locomotive represents the long time of toiling wagon trains and stage-coaches. One reaper represents a hundred harvesters. Life in the modern world teems with this concentration and consolidation, to effect in the quickest way the desired result. This is man's greatest achievement in the material world and the highest expression of his dominion on earth.

Nowhere is it more manifest than on the sea. It is peculiarly so in naval warfare, where millions are now spent in one battle ship that would formerly build several fleets. But the modern battle ship alone could vanquish all old-time fleets of many ships.

No one in the practical world insists that this paramount law of modern life shall be disregarded and that the concentrated unit shall not be an equivalent for what it actually represents in effectiveness.

And it is idle to say here that because in 1804 it required by treaty *two* sailing ships, little brigs and schooners, with two or three miles range of guns at the most, to blockade a port, or because in 1760 it was required by some continental powers to have several of these little ships anchored or stationed in a row around the port, that for that reason *one* modern cruiser of the type and effectiveness of the *New Orleans*, with her sweep and power, many times more efficient as a blockading force, can not *as matter of law* constitute a legal blockade, and does not as a *matter of fact* constitute a practically "effective blockade."

It is idle to say that there must be a useless and senseless multiplication of this costly, powerful, and far-reaching modern unit, and that only several of such modern cruisers can, in law, blockade a port. Such a position is not practical; it ignores the whole scientific philosophy of this age and would destroy the very object and purpose of the concentration in the costly and highly developed unit the power and efficiency of many inferior units of the past.

This blockade was therefore not only theoretically effective, but as matter of fact was practically effective in the actual capture of the *Olinde Rodrigues* attempting to violate it on July 17.

IV.

THE FACT OF ACTUAL CAPTURE OF THE "OLINDE RODRIGUES" BY THE UNITED STATES CRUISER "NEW ORLEANS" WHILE ATTEMPTING TO VIOLATE THE BLOCKADE OF SAN JUAN ON JULY 17, 1898, AFTER SHE HAD BEEN WARNED OFFICIALLY OF THE BLOCKADE BY ENTRY IN HER LOG ON JULY 5, 1898, BY THE UNITED STATES STEAMER "YOSEMITE" OFF SAN JUAN, AND AFTER SHE REFUSED TO OBEY SIGNAL OF UNITED STATES CRUISER "NEW ORLEANS" ON JULY 17, WAS ITSELF A CONCLUSIVE DEMONSTRATION OF THE EFFECTIVENESS OF THE BLOCKADE.

Sir William Scott first decided this principle in a case so apposite that we quote it fully.

In the *Mercurius* (1 Rob., 80, 82–84) Sir William Scott says:

> By the evidence it appears that when the vessel approached the Texel the master was warned by the officer who boarded her that he must not go into the Texel. The officer wrote on the manifest, "Hindered from going into the Texel." The inability of the master to proceed into the Texel therefore proves the blockade; for a blockade may exist without a public declaration, although a declaration unsupported by fact will not be sufficient to establish it.
>
> It has been so determined by the Supreme Court during the present war. The West India Islands were declared under blockade by Admiral Jarvis; but the Lords held that, as the fact did not support the declaration, a blockade could not be deemed legally to exist; but the fact, on the contrary, duly notified on the spot, is of itself sufficient, for public

notifications between governments can be meant only for the information of individuals. But if the individual is personally informed, that purpose is still better obtained than by a public declaration. * * *

The master pretended to be proceeding to Hamburg till he came to the passage into the Zuyder Zee, and then he attempted to enter it. How far the blockade might extend to all ports in the Zurder Zee I shall not now inquire, because I am sufficiently convinced that the intention of this master was to proceed to Amsterdam, in defiance of the prohibition, which he distinctly understood. * * *

It is said this passage to the Zuyder Zee was not in a state of blockade, but the ship was seized immediately on entering it, and I know not what else is necessary to constitute a blockade. The powers who formed the armed neutrality in the last war understood blockade in this sense; and Russia, who was the principal party in that confederacy, described a place to be in a state of blockade when it is dangerous to attempt to enter it.

This is strong common sense. It is the logic of experience. "It is said this passage to the Zuyder Zee was not in a state of blockade, but the ship, after warning, was seized immediately on entering it, *and I know not what else is necessary to constitute a blockade.*"

This is the language of the first English judge in prize law. It is now axiomatic. The proof of the blockade is the seizure on actual testing. It is not a speculative, theoretical matter, after you are warned and act at your peril. It is a serious matter of hard fact after due notification, and does not allow of any technicalities or niceties of logic or arbitrary rule.

This principle, now fixed as the test in modern international law, was judicially declared also by our own courts in the case reported in Blatchford's prize cases when the court declared.

> That there was in fact an *effective blockade* established at the port on the arrival of the brig is demonstrated by her arrest there. (*The Hallie Jackson*, Blatchford Prize Cases, 41; 11 Fed. Cases, 290, 292.)

Again, at page 155, Snow's Internat. Law (1898), the principle is further illustrated:

> In reference to the actual visibility of a blockading vessel or vessels from the blockaded port, it must be borne in mind that the necessary requirements are to make ingress to or egress from the port dangerous. It is not necessary that the blockading vessel should be in sight from the blockaded port. Nelson states, for instance, that fault was found with the blockade of Genoa, on the ground that it did not comply with the requirements of international law, the complaint resting apparently upon the statement that the blockaders could not be seen from Genoa. Nelson replied that the proof of evident danger to vessels seeking to enter or leave rested on the fact that captures were made; and it is, he said, "absurd to say that there can be no danger to a vessel seeking to enter a blockaded port because the blockading vessels are not visible to the port. Much more depended upon their number, disposition, and speed." He further said:
>
> "From my knowledge of Genoa and its gulf I assert, without fear of contradiction, that the nearer ships cruise to Genoa the more certain is the escape of vessels from that port or their entrance into it as-

> sured. I am blockading Genoa according to the orders of the admiralty and in the way I think most proper. Whether modern law or ancient law makes my mode right, I can not judge; and surely of the mode of disposing of a fleet I must, if I am fit for my post, be a better judge than any landsman, however learned he may appear."

This is nautical common sense, and is in accord with our practice and instructions.

> Empirical rules prescribing the number of vessels their anchorages, situations, etc., as made by some continental powers are not practical and have no connection with either intelligent practice or the hard facts of sea blockades. (Snow, Internat. Law, p. 155.)

"The proof of evident danger is the fact of capture." This is the latest utterance of the professor in international law of Harvard University in his lectures delivered before the Naval War College and published in 1898 by direction of the Navy Department of this Government, and it concurs with the principles as announced by the most recent and authoritative expounders of international law at Oxford and Cambridge and as decided in our cases, as cited above. Moreover, it was on these principles that the United States Navy Department expressly based its actions and instructions in this war, and the result is the practical efficiency of this blockade of San Juan, demonstrated by the actual capture of the *Olinde Rodrigues* on July 17, 1898.

We have previously seen that this court had adopted the theory of Lord Nelson that the visibility of blockaders from the port was not necessary. (The *Baigorry*, 2 Wall., *supra*.)

And we find the interpretation of the declaration of Paris, as expounded by the professor at Cambridge, England, is to the same effect. He says:

> This broad principle (declaration of Paris) is by reason of its very generality better suited than mere detailed rules to the conditions of maritime *warfare to-day*. No more effective blockade could well be devised than that maintained by a strong service of swift steamers *cruising* on regular stations off the affected *coast*. (Walker's Science of International Law, Cambridge, 1893, pp. 517-518.)

If cruising is the most effective blockade for a *coast*, then the rapid movements of a fast cruiser circling about a port and commanding its single entrance is the most effective blockade in modern warfare for a *port*. So that the movements of the *New Orleans* in front of San Juan as a blockader of that port has the high sanction of the most illustrious and most effective English sailor, the authority of the latest text writers, and the positive direction of the Navy Department of the United States in adopting Professor Snow's book as a guide to the United States Navy.

Such was the practical effectiveness of this blockade. Such concentration of efficiency, in fact, was never dreamed of even half a century ago. It excelled a fleet of old sailing ships and was more dangerous than a squadron of old-time frigates. The blockading cruiser was the ripest product of a material civilization that had wrought some of its greatest miracles in naval architecture and in the concentration of force in engines of maritime warfare. It far exceeded in effectiveness the "cross fire" of two ships of the old Continental writers

on international law, and was more dangerous than the "arc of circumvallation" of six sailing ships of a century ago.

Nothing could be more significant of the practical effectiveness of this blockade than the fact of this capture; the *New Orleans* plunging down from 14 miles from the northeast of Morro and in twenty-two minutes putting under her guns the *Olinde Rodrigues* just as both the cruiser and *Rodrigues* were, in the chase, drawing under the guns of Morro and the shore batteries, and compelling the *Olinde Rodrigues* to come to her 5 miles, while she waited and watched the Swedish bark to the northeast.

Nothing could better demonstrate the *fact* of the effective blockade than the capture and arrest there and then of this steamer, running away and defying the flag signal to stop, until the rifle shell stopped her. To her it was both actually dangerous and effective, and that after full and fair warning on July 5, repeated by signal July 17. (Eustis, p. 118; Burns, p. 121.) And it is impossible, after her capture there, when she tested it to the bottom and found it effective in fact, to aver it to be not "effective" now.

Against the practical effectiveness in fact, the claimant moreover cannot set up the mistaken opinion or erroneous belief of the master of the *Olinde Rodrigues* that the blockade was not effective or nonexistent. The master of the *Olinde Rodrigues* makes no such claim for himself. Indeed, he says he went to the cruiser as soon as he saw her, although his log shows he ran twenty minutes (which

is the whole time of the chase) after he saw her before he turned toward her. But, even if it were true that he acted under an erroneous impression, and his judgment was bad, that the blockade was not effective, this would not justify him or relieve him, for he had previous written notice in his log of the blockade, and could not experimentally test it thereafter on any theory of non-effectiveness.

This court dealt very summarily with this identical plea in the case of the *Admiral* (6 Wall., 604).

The case is stated as follows:

> On December 11, 1861, when about 30 miles off Tybee Island, that lies near the entrance of Savannah, she was boarded by a United States ship, * * * and professed that in coming to the region in which she was her purpose was to ascertain whether the blockade was raised, as she supposed when leaving England that it would be, numerous predictions to that effect having been made before she left England, as also confident assertions that the Federal Government would find it impossible to blockade effectually the Southern coast 3,000 miles in length (pp. 606, 607).

But this court in condemning the ship answered this subterfuge as follows:

> Every pretense that the vessel intended to desist from her unlawful purpose, if she found that the port was blockaded, is negatived by the circumstances. Those in charge of her knew before sailing that the port was blockaded, and they also knew that they had no reason to suppose that it was to be raised before her arrival; consequently they made no inquiry and did not wish to make any until it became

necessary to do so as a defense or excuse for an illegal act. (Idem, 616.)

The case at bar is stronger than *The Admiral*, for in the present case there was distinct warning entered in the log on July 5, and distinct notice by signal, defied on July 17 on the spot, the *Olinde Rodrigues* well knowing that the blockade was still existing.

V.

THE OLINDE RODRIGUES HAVING BEEN OFFICIALLY WARNED OF THE BLOCKADE ON JULY 5, 1898, OFF SAN JUAN, BY ENTRY IN HER LOG, THE DECLARATION OF THE BLOCKADE WAS SUPPORTED BY THE FACT OF WARNING ON THE SPOT, AND BEING CAPTURED THEREAFTER ON JULY 17 WHILE ATTEMPTING TO ENTER PORT OF SAN JUAN, SHE CAN NOT NOW PLEAD THAT THE BLOCKADE WAS NOT EFFECTIVE.

Snow's International Law (151, 152; Washington, 1898), quoting Kent, says:

> It is absolutely necessary that the neutral should have had due notice of the blockade in order to affect him with penal consequences of a violation of it. This information may be communicated to him in two ways, either actually, by a formal notice from the blockading power, or constructively, by notice to his Government, or by the notoriety of the fact. It is immaterial in what way the neutral comes to the knowledge of the blockade. If the blockade actually exists and he has a knowledge of it, he is bound not to violate it. A notice to a foreign Government is a notice to all the individuals of that nation; and

they are not permitted to aver ignorance of it, because it is the duty of the neutral Government to communicate the notice to their people.

And Snow continues (p. 151):

The French practice, which is also followed by Italy, Spain, and Sweden, is to give a notification from the Government of the blockading state, and a notice from a vessel of the blockading force of a port. Each neutral vessel is individually warned by one of the blockading squadron, a vessel not blockading being considered incompetent to warn the vessel. The warning is indorsed on the ship's papers, with date and locality, and only on subsequent attempts to enter is the vessel liable to seizure. Comparing the two methods, Hall says:

"The theory accepted in England and the United States is the natural parent of a more elastic usage. Notification is a convenient mode of fixing a neutral with knowledge of the existence of a blockade, but it is not the necessary condition of his liability to seizure. In strictness, if a neutral vessel sail with the destination of a blockaded port from a place at which the fact of the blockade is so notorious that ignorance of its existence is impossible, confiscation may take the place upon seizure without previous warning. But in practice, notification of some sort is always given. If the blockade is instituted under the direct authority of the Government the fact of its commencement is notified to foreign states. The information thus communicated affects their subjects, who must be supposed to be put in possession of the knowledge which is afforded with the express object of its being communicated to them."

Furthermore, if approach for inquiry or for warning, after due general notification, were permissible

in these days of fast steamers, "it will be readily seen," as Judge Field observed, "that the greatest facilities would be afforded to elude blockade."

"A vessel which has full knowledge of the existence of a blockade before she enters upon her voyage has no right to claim a warning or indorsement when taken in the act of attempting to enter. It would be an absurd construction of the President's proclamation to require a notice to be given to those who already had knowledge. A notification is for those only who have sailed without a knowledge of the blockade and get the first information from the blockading vessel."

In the instructions to blockading vessels and cruisers, drawn up for the war with Spain, the following paragraphs bear on this subject:

3. Neutral vessels are entitled to notification of a blockade before they can be made prize for its attempted violation. It may be actual, as by a vessel of the blockading force, or constructive, as by a proclamation of the Government maintaining the blockade, or by common notoriety. If a neutral vessel can be shown to have had notice of the blockade in any way, she is good prize, and should formal notice not have been given, the rule of constructive notoriety should be construed in a manner liberal to the neutral.

4. Vessels appearing before a blockaded port, having sailed without notification, are entitled to actual notice by a blockading vessel. They should be boarded by an officer who should enter in the ship's log the fact of such notice, such entry to include the name of the blockading vessel giving notice, the extent of the blockade, the date and place, verified by his official signature. The vessel is then to

be set free, and should she again attempt to enter the same or any other blockaded port as to which she has had notice, she is good prize.

6. A neutral vessel may sail in good faith for a blockaded port, with an alternative destination to be decided upon by information as to the continuance of the blockade obtained at an international port. But in such case she is not allowed to continue her voyage to the blockaded port in alleged quest of information as to the status of the blockade but must obtain it and decide upon her cruise before she arrives in suspicious vicinity; and if the blockade has been formally established with due notification, any doubt as to the good faith of such a proceeding should go against the neutral and subject her to seizure. (Snow, International Law, 152, 153.)

The notice to the *Olinde Rodrigues* complies fully with all these requirements. It appears from the evidence that the entry of warning was made in the log of the *Olinde Rodrigues* on July 5, in front of Morro, San Juan, by the United States auxiliary cruiser *Yosemite*, as follows: "Warned off San Juan July 5, 1898, by U. S. S. *Yosemite*, Commander Emory" (fols. 91–93), and the master of the *Olinde Rodrigues* himself writes in his "*Rapport de mer*" (sea report) on July 5, 1898, "They (officers of *Yosemite*) notify me that the blockade of the port of San Juan is official, and that on the return I will not be able to enter it" (fol. 94).

Now, the effect of this notification on the spot is of the highest importance in this case in determining not only notice but an effective blockade.

Again, Hall says:

It is impossible to fix with any accuracy the amount of danger in entry which is necessary to

> preserve the validity of a blockade. It is for the prize court of the belligerent to decide whether in a given instance a vessel captured for this breach had reason to suppose that it was nonexistent. (Hall's Internat. Law, p. 726.)

So this vital question is settled in this case by the entry in the log on July 5, both by the officers of the *Yosemite* and master of the *Olinde Rodrigues*, of the distinct warning and prohibition, and it was with full knowledge and in defiance of the warning and in defiance, also, of the *New Orleans* signal to "stop instantly and heave to" on July 17 that she attempted to violate the blockade.

Under the principle announced she had no reason to suppose the blockade to be nonexistent on July 17 on her return, and is liable as a prize for deliberate violation of the blockade duly notified.

VI.

THE FRENCH GOVERNMENT NOT HAVING COMPLAINED THAT THE BLOCKADE OF THE PORT OF SAN JUAN WAS NOT EFFECTIVE, AND THE BLOCKADE HAVING EXISTED ONLY TWENTY DAYS WHEN THE "OLINDE RODRIGUES" WAS CAPTURED ON JULY 17, 1898, AFTER WARNING, ENTERED IN HER LOG ON JULY 5, 1898, THE "OLINDE RODRIGUES" CAN NOT NOW CLAIM THAT THE BLOCKADE WAS NOT EFFECTIVE.

We have seen that on the question of the amount of danger necessary to preserve the validity of a blockade the court must determine the question of notice and also

reason the neutral had to suppose the blockade nonexistent. There is another principle. It was for "the neutral government to examine on the particular facts whether it is proper to withhold or withdraw recognition." (Hall, International Law, p. 726.)

We have noticed an illustration of this in the case of the *Niagara*, between Great Britain and the United States, *supra*.

Now, there is no evidence that France ever withdrew or withheld recognition of this blockade of San Juan, a step she must take at the time to be valid. The blockade stands, therefore, as to France, as a legal blockade, and being notified on the spot twelve days in advance of the actual capture of the *Olinde Rodrigues*, it is effective and legal against the French ship.

Again, a further principle operates here, inasmuch as the blockade proclaimed on June 27 was only twenty days in existence when the *Olinde Rodrigues* was captured, and inasmuch as no complaint or warning had been made by France to the United States as to its effectiveness.

> At the commencement of a blockade neutral powers are not exacting in their requirements as to the force necessary to make it effective. But if after a reasonable time has elapsed their warnings remain unheeded and the number of vessels stationed off the blockaded ports is obviously insufficient to close them, their government will decline to recognize the validity of any captures of the merchantmen for breach of the so-called blockade and will demand reparation for alleged seizure and condemnations. (Lawrence International Law, 582, sec. 271, Cambridge, 1895.)

So that even if there was by any possibility a cause of complaint by France, it existed within the first twenty days of the blockade, at a time when by the law of nations "*neutral powers are not exacting in their requirements as to the force necessary to make it effective,*" and as to which there have no warnings given by France or unheeded by the United States. So that in every aspect of the question the blockade is legal and effective and France and the *Olinde Rodrigues* equally bound by the legality of the capture.

CONCLUSION.

In conclusion, we respectfully submit that the evidence in the case shows on the part of the United States steamship *Yosemite*, on July 5, 1898, the highest consideration toward the *Olinde Rodrigues*, by giving full credence to her claim at that time that she had not known of the blockade of San Juan when she entered on July 4, 1898, and by allowing her to proceed after entry of the warning on her log on July 5, so that on her return thereafter there might be no question as to her full and official knowledge of the blockade.

The evidence further shows that, notwithstanding this due notification on the spot, the *Olinde Rodrigues* was during twelve days obtaining health bills and clearances for her return to San Juan; and, on the morning of July 17, 1898, although her master swears he saw the *New Orleans* and knew of the blockade, was captured while attempting to run into San Juan in defiance of the original prohibition and in disobedience of the signal then

and there of the *New Orleans* to "stop instantly and heave to."

The enforcement of the belligerent's rights, therefore, in this case was only after every other means, consideration, courtesy, and warning, twice repeated, had failed, and the United States was compelled, in protection of its undoubted and violated right, to seize the deliberate and determined violator of this blockade. In the language of Captain Folger, of the *New Orleans:* "I did not want to seize the vessel; I did not want any international question at all; I preferred not; but in face of the appearance of things I had to seize the vessel or I would have had trouble" (fol. 183).

We find, moreover, that the Navy Department had strengthened fourfold the blockade of San Juan by sending the armored cruiser *New Orleans* to take the place of the auxiliary cruiser *Yosemite,* and that in practical effectiveness of this blockade by a warship of the type of the *New Orleans,* and the means of enforcing it in her armament, both the commander of the *New Orleans* in his action and the Navy Department in its instructions were acting on the settled principles announced and the precedents established by the United States in the interpretation of the declaration of Paris for forty years, according with the English and German view, and of which all the neutral powers have had notice for over thirty years.

To say that this capture is illegal is to ignore the whole diplomatic and judicial history of the United States on this question. To say that it is a marine trespass is to

say that the imperative duty of the naval commander, under the principles and authority of modern international law and the direct instructions of his Government, was a malicious tort, and that the claimant company here and the officers and crew and passengers of this steamer have a claim for such arrest and detention and forcible carrying away to the United States. To say that such a grave charge is true, and that such a claim, serious in all its aspects, is valid, is to say that the officers of the Navy, the Navy Department, and the Government of the United States have departed from plain duty and ignored principle and authority in order to commit and justify a gross and deliberate aggression upon unoffending neutrals under the pretense of belligerent rights. The facts of the case, the history of the naval service and of diplomacy, and the science of law alike repel this imputation.

We confidently submit the question to this court, and ask for a reversal of the decree below.

JOHN W. GRIGGS,
Attorney-General,
HENRY M. HOYT,
Assistant Attorney-General,
For the United States.

J. P. KENNEDY BRYAN,
For the Captors.

In the Supreme Court of the United States

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
THE STEAMSHIP "OLINDE RODRIGUES," La Compagnie Générale Transatlantique, claimant.

No. 704. In Prize.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

BRIEF IN REPLY TO MOTION TO ADMIT CERTAIN DOCUMENTS.

By this motion it is sought to bring before the court certain reports from officers of the Government relative to the San Juan blockade, appearing in a publication of the Navy Department issued after the final hearing below. The United States opposes the motion, and respectfully submits the following reasons:

First. These reports are not evidence. They are not now relevant or competent. They are isolated statements

transmitting official information to superior officers, and consist largely of opinion and hearsay. That the opinions are official and the reports part of a public document makes no real difference.

Second. There is no reference to these reports in the record. Although a late effort may have been made to introduce them or insert them in the record below, the effort failed, and properly, because the offer came too late and was made irregularly. It is no answer to say that the question was presented below as soon as the reports were discovered. A cause can not stand over for the introduction of later discovered information bearing on it, otherwise it might never be closed. There must be a limit. The claimants had an opportunity below, under the order of the court, to offer additional proof, although perhaps not entitled thereto in view of the facts as to concealment and destruction of papers and the authorities on that point. (*The Fortuna*, 3 Wheat., 236.) The claimants might then have obtained proper evidence from the officers in question. They did not avail of the opportunity to take such testimony or any other testimony; they can not now do so in this way. We earnestly contend that they are not entitled to further proof in any view; but while this court may order further proof in its discretion as to material matters which are not sufficiently proved (*The Adeline*, 9 Cr., 244; *The Grotius*, 8 Cr., 456; *The Sally Magee*, 3 Wall., 451), the practice clearly is to hear the cause in the first instance upon the record from below (*The London Packet*, 2 Wheat., 372).

Third. Besides the formal objections, to admit these reports without explanation would work real and grave injustice to the United States and the captors.

The reports relate to the effectiveness of the San Juan blockade. If they are to come before the court at all, the United States should have an opportunity to show the meaning of the officers in question—with reference to what time, conditions, and contingencies they were speaking, and what the other facts of the blockade were as illustrating its nature and history from both the military and commercial standpoints. To introduce these statements and opinions without explanation or counter-proof would amount to putting these officers on the stand for *ex parte* examination without giving the Government and captors an opportunity to cross-examine.

It may be said that to cross-examine would be for the Government to ask for further proof after its case is closed as to a point upon which it might have examined below. This is not true, and the situation is exactly the reverse. The claimants are asking irregularly for further proof after an opportunity below unavailed of (Rec., p. 105) and upon information coming to light after all proofs were in; and they ask for further proof in such a form that the Government is deprived of a fundamental and essential right.

As a rule, allowing further proof to one party in a prize case opens the case to the other party also. (The *Sally*, 1 Gall., 401; *The Maria*, Spinks' Prize Cases, 323; *The Adriana*, 1 Rob., 313.)

If the court deem it well to have this information before them, then the Government respectfully submits

that it should be permitted to show the meaning of these reports by formal counter proof or by sworn statements. Such statements would be at least equivalent to the letters in competency and relevancy as well as in evidential character and weight. Such statements might properly come, we submit, either from officers commanding the station and vessels thereon or from the commander in chief. The affidavit of Sir C. Napier, apparently received under similar circumstances in the case of *The Franciska* (Spinks' Prize Cases, 111, 116), is an illustration of such a statement. It does not appear to have been doubted that such affidavits were properly received and considered as further proof, or in the nature of further proof, in that case.

In reference to the contention of the claimant that the deposition of the prize master, Lieutenant Russell, and the prize crew, contained at pages 49 to 57 of the record, should not be considered at this hearing, it should be noted that these depositions of the prize master and the prize crew were made the basis for the order to take further proof (p. 105), and were before the court as a part of the record of the cause under section 4622 of the Revised Statutes, which directs, not only that the prize commissioners shall take the affidavit of the prize master required by section 4617, and the testimony of the witnesses sent in separate from each other on interrogatories prescribed by the court in the manner usual in prize cases, but also expressly requires:

> The prize commissioners shall also take depositions *de bene esse* of the prize crew and others at the request of the district attorney on interrogatories prescribed by the court.

It thus appears that the prize commissioners acted in this case in strict conformity with the statute in taking the depositions of the prize master and the prize crew and in returning them to the court as a part of the record of the depositions taken *in preparatorio;* and it is to be noted that this statute covers the whole subject of prize and contains the legislative policy as to procedure and as to the depositions which are to be taken and used in the hearing before the district court in all cases of prize coming before it. It is to be noticed further that these depositions were actually taken and were so returned by the prize commissioners, and were actually on file in the district court and so certified by the clerk of the district court.

It is submitted that whatever may be the rule in other foreign jurisdictions as to the evidence upon which a cause is to be heard, and whatever may have been the customary practice of English prize courts in this particular, the act of 1864, which is practically Title LIV of the Revised Statutes, has fixed and settled the practice for the United States courts and determined the competency and regularity of these depositions of the prize master and the prize crew as a part of the record before the prize court in the first instance.

It further appears, in addition to this statutory necessity and regularity of these depositions, that there has been no action of record in the court below suppressing these depositions or giving them any limited effect.

These remarks are submitted in view of the statutory regulations and in view of the regularity of the practice

thereunder. We beg to say, however, that in the argument of this case on the merits we have not referred to or quoted from any one of these depositions of the prize master or prize crew taken *in preparatorio*, but have rather relied upon the concurrent testimony of the officers of the *New Orleans*, as quoted.

Further, we beg to call the attention of the court to the fact that by the order of the court below granting further proof (fol. 230) both to the captors and to the claimants the time was limited, and that after the captors had put in their proof the claimants, without adducing any further proof, went to a hearing of this cause on the merits, and yet claimed to reserve their right of adducing further proof "as it may hereafter be advised." (Fol. 379.)

Of this remarkable procedure the court below was moved to say:

> There has been considerable delay in taking the additional testimony, owing to the absence from the country of the chief witnesses, but all the testimony in behalf of the captors is now in, and the case is before the court upon a motion to discharge the vessel, proctors for the claimants reserving the right to introduce testimony hereafter, *if the motion is denied*, without passing upon the question whether, in a proceeding in admiralty, a party having an opportunity to offer testimony failing to do so may draw the opinion of the court upon his adversary's case, and thereafter be permitted to reply to it, a question of practice which is at least doubtful, as counsel were duly warned. (Fol. 383.)

It thus appears that the claimants deliberately, and after warning, did not put in any testimony in the court

below according to their opportunity, and to ask now for further proof after the long delay is against the settled practice of this court, when a cause in admiralty is before this court finally on its merits, with all the proofs that might have been put in below.

After the court has looked into this cause, if there is any doubt in the mind of the court on this record, the court may, *sua sponte*, order further proof, but without a hearing or in advance of the hearing there does not appear in this record any adequate reason for such a step.

Moreover, it is to be observed that the order of the district court for further proof was limited in the subject-matter of the proof, as follows:

> Ordered, that the captors have ninety days from the date hereof to supply further proof as to the entry of the *Olinde Rodrigues* into the port of San Juan, Porto Rico, on July 4, 1898, and as to courses and movements of said vessels on July 17, 1898, and that the claimants may thereafter have such time to offer testimony *in reply* as may seem proper to the court (fol. 230).

By this express limitation of the subject-matter of the further proof, the movement of the *Olinde Rodrigues* and of the *New Orleans* on July 4 and July 17, and the claimants' reply thereto, all other testimony was incompetent in the court below, and therefore the letters which the claimants now seek to introduce in evidence do not come within the limits of this order for further proof, and, again, do not appear to have been introduced in evidence by the claimants in the court below, because the record shows that the claimants did not introduce any evidence after the further proof taken for captors, but, on the

contrary, went to a hearing of the cause expressly claiming the right to introduce further proof thereafter, *if the motion should be denied* (fol. 379).

Indeed, the principle is that, upon further proof allowed and taken and the cause heard, it is not opened again. This is settled procedure.

At page 429, Upton's Maritime Warfare and Prize, third edition, it is thus stated: "On return of further proof allowed, if any taken, the cause is again heard in its order upon the original and supplementary proof, and not again opened."

We respectfully submit that the motion should be denied.

JOHN K. RICHARDS,
Solicitor-General.
HENRY M. HOYT,
Assistant Attorney-General.
J. P. KENNEDY BRYAN,
For the Captors.

No. 704.

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In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
THE STEAMSHIP "OLINDE ROUSSEL," La Compagnie Générale Transatlantique, claimant.

No. 704.
In Prize.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

REPORTS OF CERTAIN OFFICERS AS TO SAN JUAN BLOCKADE AND AFFIDAVITS BEARING UPON THE SAME.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
THE STEAMSHIP "OLINDE RODRIGUES," La Compagnie Générale Transatlantique, claimant.
No. 704.
In Prize.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

REPORTS OF CERTAIN OFFICERS AS TO SAN JUAN BLOCKADE AND AFFIDAVITS BEARING UPON THE SAME.

[Letter of Capt. C. D. Sigsbee, U. S. N.; Appendix to Report to the Chief of the Bureau of Navigation, 1898, p. 224.]

U. S. S. ST. PAUL,
Mole St. Nicholas, Haiti, June 27, 1898.

SIR: Instead of leaving the blockade of San Juan to-night to proceed direct to New York for coal, in conformity with your order to me to proceed when necessity arose, I decided yesterday to come here instead, in order

to recommend to you promptly an increase of the blockading force off San Juan, where the *Yosemite* now remains alone, and where the *St. Paul* was alone before the *Yosemite* arrived. Had I remained off San Juan until to-night my coal would not have brought me here and permitted me to go to New York also; I therefore decided to sacrifice one day, in order that my recommendation to you should not be delayed for a number of days, as would have been the case had I proceeded direct to New York.

It was immediately demonstrated to the *St. Paul*, on her arrival off San Juan, that she would not be permitted to approach the batteries undisturbed. In fact, Spanish war vessels endeavored to entice her under the batteries, which, as you know, are very heavy.

I beg to respectfully suggest that the difficulties of blockading the single port of San Juan are greater than those to be met in blockading Havana, where there are no Spanish war vessels and no torpedo-boat destroyers, and where ports are blockaded both to the eastward and westward, thus giving flank support. Vessels intending to run the blockade of San Juan can, owing to the short length of Porto Rico east and west, make telegraphic communications with San Juan for advice with reference to the disposition of the blockading force, and this they can do within a few hours of their expected arrival at that port. This can be done by visiting the east and west anchorages of the island or St. Thomas. San Juan being well to windward in the trade region, and having no land influences to windward of it, the seas off that port are naturally continuously rough day and night, making boarding both prolonged and difficult, especially for auxiliary crews. When a single vessel constitutes the blockading force, she will oftentimes be compelled to make the visit close in to the port, where she will be uncommonly exposed to attack during the visit.

I was the more impelled to leave San Juan a day in advance of my original intention by my belief, based on reports from the harbor of San Juan, that the torpedo boat *Terror* could not, within the single day devoted to my visit here, repair the damage done to her by the *St. Paul*, in regard to which I refer you to another letter of this date. It is advisable to constantly keep the *Terror* in mind as a possible active force; but leaving her out of consideration, the services to be performed by the *Yosemite*, of blockading a well-fortified port containing a force of enemy's vessels whose aggregate force is greater than her own, is an especially difficult one. If she permits herself to be driven away from the port, even temporarily, the claim may be set up that the blockade is broken. It was still more difficult for the *St. Paul* when she was alone on the blockade. The *St. Paul's* speed was reduced, by an accident to her starboard engine, within two knots of the maximum speed of the *Yosemite*. That made but little difference, except in chasing, for the reason that she also had to maintain the blockade as against any force of the enemy.

I venture to suggest that, in order to make the blockade of San Juan positively effective, a considerable force of vessels is needed off that port, enough to detach some occasionally to cruise about the island. West of San Juan the coast, although bold, has outlying dangers, making it easy at present for blockade runners having local pilots to work in close to the port under the land during the night.

Very respectfully,

C. D. SIGSBEE,
Captain, U. S. N., Commanding.

The SECRETARY OF THE NAVY.

[Report of Commander C. H. Davis, U. S. N.; Appendix to Report to the Chief of the Bureau of Navigation, 1898, p. 642.]

U. S. S. DIXIE,
Off Porto Rico, July 26, 1898.

SIR: I have the honor to report that in obedience to your order of the 24th instant I stood into San Juan, Porto Rico, and found only the *New Orleans*, Captain Folger, blockading off that port.

Captain Folger kept me through the night of the 24th, as he had information which led him to believe that an attack would be made on his ship during the night.

There are in San Juan, Porto Rico, the *Terror*, torpedo gunboat; the *Isabella II*, cruiser; a torpedo boat, and a gunboat; there is also a German steamer, which is only waiting an opportunity to slip out.

The *New Orleans* is the only ship I have sighted on the coast of Porto Rico. Captain Folger had no knowledge of the whereabouts of the *Prairie* or *Montgomery*.

Captain Folger directed me to report that one ship was inadequate for the blockade of San Juan, and there should be more than two ships off that port to establish an effectual blockade.

The *New Orleans* could not approach within less than 6 miles of the entrance of San Juan without drawing the fire of the batteries, mounting 8-inch guns well served. It is Captain Folger's opinion that the enemy will attempt to raise the blockade of San Juan, and it is my opinion that he should be reenforced there with the least possible delay.

On the morning of the 25th, in the execution of your orders, I went to San Juan to collect any force that might be there, but found no United States ships there. I took as a prize the French steamer, *Manoubia*, of Marseilles, from Martinique, bound for Sagua la Grande, Cuba. I

have made her the subject of a separate letter to the commander in chief, which I herewith inclose.*

I am, sir, your obedient servant,

C. H. DAVIS,
Commander, Commanding.

Capt. F. J. HIGGINSON, U. S. N.,
Commanding U. S. S. Massachusetts,
Senior Officer Present.

[Affidavit of Capt. C. H. Davis, U. S. N.]

CITY OF WASHINGTON,
District of Columbia, ss:

CHARLES HENRY DAVIS, now captain, United States Navy, being duly sworn, deposes and says that in his report to Capt. F. J. Higginson, U. S. N., dated from the U. S. S. *Dixie*, off Porto Rico, July 26, 1898, and appearing on pages 642 and 643 of the Appendix to the Report of the Chief of the Bureau of Navigation (Washington, Government Printing Office, 1898), the opinions expressed as to the efficiency of the blockade of San Juan, Porto Rico, by the U. S. S. *New Orleans*, as he verily believes, refer to the desirability of reenforcement for the blockade as a military blockade only and in order to be prepared to resist hostile attack; that he himself expressed in said report the opinion that Captain Folger should be reenforced for this reason only; and that his own opinion was and is clear that the blockade of the port of San Juan was effective as a commercial blockade, as shown by the stop-page and seizure record of the respective blockading vessels.

C. H. DAVIS,
Captain, U. S. N.

Subscribed and sworn to before me this 31st day of March, 1899.

[SEAL.]

JOS. P. RUDY,
Notary Public, D. C.

[Affidavit of Capt. W. M. Folger, U. S. N.]

STATE OF VIRGINIA,
County of Warwick, ss:

I, W. M. FOLGER, captain, U. S. Navy, being duly sworn, depose and say that I have read a copy of the report of Commander C. H. Davis, commanding the U. S. S. *Dixie*, to Capt. F. J. Higginson, senior officer present, dated off Porto Rico, July 26, 1898, and contained on pages 642 and 643 of the Appendix to the Report of the Chief of the Bureau of Navigation for the year 1898; that the facts therein stated referring to me are true; that the statements and opinions therein attributed to me were made and expressed by me with reference only to the military efficiency of the blockade of San Juan, in view of the probability of hostile attack, and not to the effectiveness thereof as a commercial blockade; that I was and am of the opinion that the blockade of the port of San Juan as a commercial blockade was effective, and that this is shown by the stoppage and seizure record of the respective blockading vessels.

W. M. FOLGER,
Captain, U. S. Navy.

Subscribed and sworn to before me this 31st day of March, 1899.

[SEAL.] J. L. MARYE, Jr.,
Notary Public.

[Certified to be a true copy from the original in the records of the Department.—Charles H. Allen, Acting Secretary of the Navy.]

U. S. S. YOSEMITE,
Blockade off San Juan, Puerto Rico, July 3, 1898.

SIR: 1. I have the honor to report the following vessels beached, destroyed, or warned since Sunday, June 26, since which time the *Yosemite* has been the only vessel blockading this port.

2. Tuesday, 28th, Spanish steamer between 4,000 and 5,000 tons displacement, name unknown, beached and apparently bilged in the same position as run on shore and deserted.

3. On Wednesday, June 29th, overhauled Spanish three-masted schooner *Joven Maria*, about 50 tons displacement, laden with salt; brought to near reefs; old and unseaworthy; scuttled.

4. Sunday, July 3, overhauled English steamer *Cayo Blanco*, of London, to Jamaica, but apparently entering San Juan. Warned and warning entered on her register.

5. Sunday, July 3, overhauled with difficulty English steamer *H. M. Pollock*, of London. Had sailed from Arecibo, a port a short distance to the westward of this place, cleared for Port Medio Mundo, on eastern end of island. Overhauled the vessel carefully and found her partially loaded with a cargo of sugar. Have no doubts, from the efforts of the vessel, that she intended to go into San Juan. Warned the master and entered the warning in the log. When the *Pollock* was last seen she was hull down to the eastward of San Juan Harbor.

I have the honor to be, very respectfully,

W. H. EMORY,
Commander, U. S. Navy, Commanding.

To the COMMANDER IN CHIEF,
United States Naval Force,
North Atlantic Station.

[Certified to be a true copy from the original in the records of the Department.—Charles H. Allen, Acting Secretary of the Navy.]

U. S. S. YOSEMITE,
Blockade off San Juan, Puerto Rico, July 10, 1898.

SIR: 1. At 11.30 p. m. on Saturday, July 9, boarded and warned the ocean steamer *Gallicia*, of Hamburg.

2. This steamer gave the *Yosemite* an exciting chase of three hours' duration—exciting because she had every appearance of a Spanish troop ship.

3. When first sighted she was headed for Porto Rico, but upon seeing the *Yosemite*, headed to the northward and westward. When the chase was overhauled she was going east at a speed of 15 knots an hour.

4. In connection with the overhauling of the *Galicia* it will be remembered that on Saturday, June 25, just two weeks ago, the *St. Paul* overhauled and warned off the Hamburg steamer, a sister ship of the *Galicia*.

I have the honor to be, very respectfully,

W. H. EMORY,
Commander, U. S. N., Commanding.

To the COMMANDER IN CHIEF,
United States Naval Force,
North Atlantic Station.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
THE STEAMSHIP "OLINDE RODRIGUES," La Compagnie Générale Transatlantique, claimant.

No. 704. In prize.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FROM THE DISTRICT OF SOUTH CAROLINA.

SUPPLEMENTAL AND REPLY BRIEF ON BEHALF OF THE UNITED STATES AND THE CAPTORS.

I.

We respectfully submit the following additional arguments upon the points involved in this case:

1. *Distinction between a commercial blockade and a military blockade.*

Blockades are divided into two classes, the commercial blockade and the military blockade. Professor Snow, at page 150, International Law (Washington, 1898), says:

> Blockades may be either military or commercial, or may partake of the nature of both. As military

blockades they may partake of the nature of a land or land-and-sea investment of a besieged city or seaport, or they may consist of a masking of an enemy's fleet by another belligerent fleet in a port or anchorage where commerce does not exist.

As commercial blockades they may consist of operations against an enemy's trade and revenue, either localized at a single important seaport or as a more comprehensive strategic operation by which a portion or the entire sea frontier of an enemy is placed under blockade. A measure of this kind was applied by the British in the war of 1812 to our Atlantic coast; by the Federal Government in the civil war to our southern Atlantic and Gulf coast, and by the United States to the coasts of Cuba in the war with Spain. A measure of this kind is a war operation of vital importance, conducing strongly to a successful peace, not only by the suppression of that part of a nation's revenue arising from customs duties, but by causing a cessation or great reduction of the export of the great products of the country, upon the movement and sale of which so much of the prosperity and the livelihood of its citizens depend. It may also cut off the supply of the imported part of the materials requisite for the effective conduct of the war.

Efforts have been made to do away with commercial blockades by neutral nations. The United States at one time advocated such abolition, but afterwards, during the period of the civil war, established the largest commercial blockade ever known. Of this blockade Dana says:

"It extended from the Potomac to the Rio Grande, both on the Atlantic coast and the Gulf of Mexico, over a stretch of over 3,000 miles. Except at Charleston, the blockading force made no attempt

to reduce the cities blockaded. * * * This vast blockade for four years was purely commercial. The great aid it contributed toward the diminution of the resources of the enemy, their exhaustion, and final surrender, and the now generally recognized necessity for it, have doubtless been instructive to America and the rest of the world." * * *

Charleston was, as Mr. Dana suggests, an example of a sea investment or military blockade and a commercial blockade combined. In cases of this kind a much larger blockading force is necessary.

It is thus seen that our country has recognized the essential difference between a military and a commercial blockade. The commercial blockade is one which deals simply with the exclusion of trade from the ports of the belligerent, whether in neutral or enemy's trading ships. The military blockade involves the idea of armed conflict with the belligerent, either for the purpose of reduction of the port by siege, or by a conflict at the port with the fleet of the enemy. In all cases, wherever there is a possibility of this armed conflict with the belligerent, the necessity of a greater blockading force is apparent. For example, in the late war with Spain the blockade of Santiago as a commercial port could have been very readily effected by a modern cruiser of the type of the *New Orleans* blockading its single entrance; but when Cervera's fleet took refuge there, the operation became one of military strategy against the belligerant, and there was concentrated in this military blockade nearly the entire force of the American navy in those waters. The question of commercial blockade was at first one wholly apart from and independent of

the military blockade of Santiago, which developed into a great naval operation and battle.

It will thus be seen that the force necessary to maintain a military blockade not only is greater than the force necessary for a commercial blockade, but the adequacy of the force varies according to the power of the belligerent to resist the military blockade.

In the same way the adequacy of a force sufficient to maintain a commercial blockade varies with the extent of coast that is blockaded, and depends also on the question whether it be on the one hand a single port with a single entrance, at a small town like that of San Juan of 20,000 inhabitants, with a very limited commerce, or, on the other hand, a port of large size and active commerce, or finally an extensive stretch of coast. In other words, there is a difference in kind between the military and the commercial blockade. There is also a question of degree in both as to the adequacy of the force, whether that force is adequate simply to prevent commercial trading with the port, or also is adequate to meet hostile attack from the enemy.

As long as the commercial blockade is maintained and is practically effective, so as to make it dangerous for trading vessels to attempt ingress or egress from the port, the blockade continues as matter of law to be valid. But when, in armed conflict between the blockading force of the belligerent and the enemy, the blockading force is driven off by the superior military force of the enemy, thereby demonstrating that the military blockade is inadequate and not effective, then the blockade ceases, but not until the blockading force has actually in fact

been vanquished and driven off by the enemy is the blockade raised.

The authorities for this position are very clear. In Snow's International Law, at page 154, the language is:

> A blockade is raised when an enemy's force succeeds in driving off the vessels engaged in the blockade, or when the blockading vessels are withdrawn by the government instituting the blockade.

In Hall's International Law, page 727, it is said:

> This abstention from any pedantic interpretation of general rules extends to cases where, the force being adequate and the fact of blockade known, a ship enters owing to a momentary absence of a blockading vessel, not only when, as already mentioned, the absence is owing to weather, but even when it is caused by the chase of a prize. The blockade is not in these cases raised, and an endeavor to take advantage of such absence is looked upon as an attempted breach. On the other hand, the blockade ceases if an enemy's force succeeds for however short a time in driving off the squadron which is charged with maintaining it. (See also Laurence, International Law, p. 519.)

Here is a clear distinction between a commercial blockade, which is effective and continuous—even through temporary absence of a blockading vessel on account of weather or in chase of a prize—if it is practically effective in preventing egress from and ingress to the port, or, in the language of our cases, makes the egress or ingress simply "dangerous." As long as this condition of danger in attempting to enter the port exists, the commercial blockade exists; but the commercial blockade may not have sufficient strength to withstand an attack of

the enemy; that is, it may not in itself be sufficient to meet and overcome the fleet of the enemy sent against it. It may be inadequate from a military standpoint, and when that appears by actual defeat, and the blockading force is driven off by a superior military force, then the blockade is raised, because from a military standpoint it has proved inadequate.

This difference between a commercial blockade and a military blockade is stated again by Mr. Cass, Secretary of State, to Mr. Mason, June 27, 1859 (3 Whart. Int. Law Dig., p. 373), as follows:

> The blockade of an enemy's coast, in order to prevent all intercourse with neutral powers, even for the most peaceful purpose, is a claim which gains no additional strength by an investigation into the foundation on which it rests; and the evils which have accompanied its exercise call for an efficient remedy. The investment of a place by sea and land with a view to its reduction, preventing it from receiving supplies of men and material necessary for its defense, is a legitimate mode of *prosecuting hostilities* which can not be reasonably objected to so long as war is recognized as an arbiter of national disputes. But the blockade of a coast or of commercial positions along it, without any regard to ulterior military operations, and with the real design of carrying on a *war against trade*, and from its very nature against the trade of peaceable and friendly powers, instead of a *war against armed men*, is a proceediug which it is difficult to reconcile with reason or with the opinions of modern times.

The difference between a commercial and a military blockade, the one being simply a war against trade without reference to armed encounter with the enemy, was

recognized by the United States, but we have seen that this protest against the commercial blockade was not accepted by the United States in the civil war, but the doctrine of commercial blockade was firmly established. (See Snow's International Law, *supra.*)

The difference between a commercial and a military blockade is illustrated in this record. Navigator Rooney in his testimony (fols. 341–343) sets this out clearly as to the blockade of Santiago previous to the *New Orleans* coming to San Juan. He says the *New Orleans* was not alone off Santiago, because "we were blockading not only the harbor, but the Spanish fleet as well—Admiral Cervera's fleet;" and giving a list of United States battle ships before Santiago, he further says (fol. 342):

> Q. The blockade of Santiago of which you speak was during the time Admiral Cervera's fleet was in Santiago?
>
> A. Yes, sir.
>
> Q. It was not the blockade of a commercial port, but the blockade of a port where the Spanish fleet had taken refuge?
>
> A. Yes, sir. I would like to say, further, it was a blockade commercially as well, because we were in war with the Spanish Government.
>
> Q. But I mean the special significance of the number of vessels was owing to the fact of Cervera's fleet being there?
>
> A. Owing to the fact that it was a *naval operation* against an enemy's fleet.
>
> Q. And for that reason, the concentration of vessels there?
>
> A. Yes, sir.

It appears from the letters of Commander Davis, of the *Dixie*, and Captain Sigsbee, of the *St. Paul*, that the

desire for reenforcement of the blockade of San Juan was also for this specific purpose—that is, to meet the anticipated attack by that portion of the enemy's fleet which was in the harbor of San Juan. For this purpose only, and not to render effective the commercial blockade, were any other vessels needed after sending the *New Orleans*. In the words of Navigator Rooney, the reenforcement was needed in view of and "owing to the fact that it was a naval operation against an enemy's fleet"—that small remnant of the fleet which was still afloat in San Juan Harbor.

It appears by this record that after the Secretary of the Navy was informed by Captain Sigsbee that it was difficult for the *Yosemite* to blockade San Juan, Admiral Sampson himself officially, in view of all the circumstances, ordered the *New Orleans* to blockade the port and harbor of San Juan.

Lieutenant Rooney in his testimony (fol. 342) says:

> We were ordered by the admiral to go to San Juan to blockade; that was on July 9 or 10. We were sent officially by Admiral Sampson from Guantanamo to blockade the port and harbor of San Juan, and we arrived there on July 14 from Guantanamo.

It thus appears from this record that twelve days after Captain Sigsbee had formally called the attention of the Secretary of the Navy to the necessity of strengthening the blockade of San Juan, Admiral Sampson, commander in chief of the fleet in West Indian waters, sent officially the *New Orleans* to blockade the port and harbor of San Juan. This official action of Admiral Sampson is

itself his answer to that representation and request, and the *New Orleans* was therefore sufficient in his judgment to render the blockade effective.

We have seen in the main brief, that by such action in sending the armored cruiser *New Orleans* to blockade the harbor of San Juan, he had strengthened the blockade fourfold, by reason of the greater armament, longer range of guns, and greater speed of the *New Orleans*, as compared with the *Yosemite*, the converted cruiser, formerly the merchantman *El Sud*, of the Morgan Line.

It further appears that the *New Orleans* was in herself adequate for the effective blockade of San Juan in the opinion of Admiral Sampson, commander in chief of the fleet, who sent her alone for that service on the 9th or 10th of July, from Guantanamo, because Cervera's fleet had been destroyed a week before and the whole naval force engaged before Santiago in that naval operation was at his disposal. His action, therefore, in sending the *New Orleans* alone was not for any lack of other vessels, but must necessarily have been because he, as commander in chief, deemed her in herself adequate.

This difference between a commercial blockade adequate in itself in its war on trade and a military blockade unable to withstand the hostile attack of the enemy is again illustrated by Sir William Scott in *The Hoffnung* (6 Rob., 117), where, after giving full effect to the commercial blockade so long as it continued without interruption, and giving full effect also to the inability of the blockading force to withstand hostile attack, the blockade

being raised or ceasing when the blockading force is driven off, he says:

> When a squadron is driven off by accidents of weather, which must have entered into the contemplation of the belligerent imposing the blockade, there is no reason to suppose that such a circumstance would create a change of system; since it could not be expected that any blockade would continue many months without being liable to such temporary interruptions. But when a squadron is driven off by a superior force a new course of events arises, which may tend to a very different disposition of the blockading force and which introduces, therefore, a very different train of presumptions in favor of the ordinary freedom of *commercial* speculations. In such a case the neutral merchant is not bound to foresee or to conjecture that the blockade will be resumed, and therefore, if it is to be renewed, it must proceed *de novo*, by the usual course, and without reference to the former state of facts, which has been so effectually interrupted. On this principle it was that the court held the former blockade to have become extinct, and intimated an opinion that there should be a repetition of the same measures, on its recommencement, to bring it to the knowledge of neutral States, either by public declaration or by the notoriety of the fact.

In this opinion Sir William Scott clearly recognized the commercial blockade as long as it lasted legal effective and binding, although thereafter it proved, in fact, inadequate as a military blockade, in that it was unable to cope with and was actually driven off by the enemy's force.

So that the real question in the light of this opinion, as to the effectiveness or continuance of a commercial

blockade, does not arise until there has been an actual armed conflict between the belligerent and the blockading force and until that conflict is decided. If against the blockading force, then, and then only, is the commercial blockade interrupted. If in favor of the blockading force, then the blockade has been, as a matter of fact, effective, both as a commercial and as a military blockade.

2. *The naval reports.*

This difference in principle between a commercial and military blockade appears also by the letters and affidavits of Captains Sigsbee, Davis, and Folger.

Now, it is to be noted that the reason for the opinion of Captain Sigsbee at that time in his report of June 27, 1898, is shown by his report of June 28 at pages 220–222 of the appendix to the Report of the Chief of the Bureau of Navigation, 1898. In this report he describes the attack upon the *St. Paul* off the port of San Juan by the Spanish cruiser *Infanta Isabel*, or *Isabel II*, a sister ship of the *Don Juan de Austria*, sunk at Manila, and also at the same time by the torpedo-boat destroyer *Terror*, in which engagement the *St. Paul* injured the *Terror* severely and drove the attacking force back into San Juan. It was in view of this attack upon the *St. Paul* and also in view of the fact stated by Captain Sigsbee at page 223, *idem*, to wit: "Although the *St. Paul* is an enormous ship, she has not a great battery" (she was only a converted cruiser and not a warship, and was of short-range guns, 5,400 yards), that he made a recommendation of increasing the blockading force.

It was for this reason also that Captain Sigsbee, in his letter of June 27, 1898, thought that the *Terror* and the Spanish cruiser were also to be borne in mind. He writes as follows:

> It is advisable to constantly keep the *Terror* in mind as a possible active force; but leaving her out of consideration, the services to be performed by the *Yosemite* of blockading a well-fortified port *containing a force of enemy's vessels* whose aggregate force is greater than her own is an especially difficult one. If she permits herself to be driven away from the port, even temporarily, the claim may be set up that the blockade is broken.

It will thus be seen that Captain Sigsbee had in mind not the commercial blockade and the ability of the *Yosemite* to keep all trade ships out of the port, but the force of enemy's vessels whose aggregate force was greater than the *Yosemite*, and who by driving off the *Yosemite* might raise the blockade.

We have seen that the *Yosemite* battery was only of small guns of $3\frac{1}{2}$ miles range, and she was a converted merchantman, *El Sud* of the Morgan line, and was only known as an auxiliary cruiser.

As to the suggestion of Captain Sigsbee in closing this letter—

> I venture to suggest that, in order to make the blockade of San Juan positively effective, a considerable force of vessels is needed off that port, enough to detach some occasionally to cruise about the island. West of San Juan the coast, although bold, has outlying dangers, making it easy at present for blockade runners having local pilots to work in close to the port under the land *during the night.*

We have to remark:

First. That this suggestion is to make the blockade "*positively* effective." This is not the measure of an effective blockade under the declaration of Paris. To satisfy this obligation it need only be dangerous—that is, practically effective; but it is the zeal of an American naval commander to have the blockade positively and absolutely effective, that being the natural ambition and desire of every naval officer in filling in largest measure the cup of diligence and effort in behalf of his country. But this high state of efficiency goes far beyond what the law requires in discharge of international obligation to neutral traders who had on the spot in advance notice and warning of the blockade.

Second. It is not necessary to cruise about the island of Porto Rico in order to render the blockade of San Juan effective, although it might be highly desirable to do so as a means of making it positively effective in the highest sense of naval warfare. It is sufficient under the obligation of international law only to have a modern cruiser like the *New Orleans* directly off the port, making egress or ingress dangerous in fact. It is to be remembered that the President's proclamation was of a blockade of the port of San Juan only, and not of the coast.

Third. Again, this appears by Captain Sigsbee's reference to blockade runners with local pilots working in close to the port under the land during the night. We have already seen that it is not necessary for a blockade to be effective that it shall absolutely prevent the ingress

of vessels during the night. That has always been one of the exceptions allowed in international law.

"The fact that various ships may have successfully escaped through the blockade will not itself prevent the blockade from being an effective one by international law."

"Vessels may get in or out during the night or fogs or violent winds, but this does not make it not effective." (Woolsey's International Law, p. 344, quoting Dr. Lushington in *The Franciska*, Spinks' Prize Cases, 111, 125 ~~175~~, in which he says: "But allowing for a reasonable number of these vessels escaping by *night* or during fogs, *which would not in the slightest degree affect the validity of the blockade.*") * * *

Indeed, the actual condition of the coast about San Juan is stated very clearly in the "Navigation of the Gulf of Mexico and the Caribbean Sea," Vol. I, 4th ed., p. 342 (Washington, 1898), issued by the Navy Department, as follows:

> The shore appears to be skirted by a reef, inclosing numerous small cays and islets, over which the sea breaks violently, and it should not be approached within the distance of 4 miles.

So that all that Captain Sigsbee reported was in expectation of a conflict of armed force before San Juan in view of his own engagement, and by way of suggestion of bringing the blockade, not only of the port, but about the island, to the highest efficiency, that is, in his own words, "*positively effective*" as a military, as well as a commercial blockade.

If we examine the official reports of the *Yosemite*, by Commander Emory, we find that her effectiveness was demonstrated by her stopping a large number of vessels and destroying by beaching one Spanish troopship, and by actually stopping the *Olinde Rodrigues*, July 5, coming out of San Juan, and recording the warning in her register. So that, even with the *Yosemite*, her practical effectiveness was demonstrated. (See reports of Commander Emory in printed pamphlet filed.)

So also in respect to the letter of Commander Davis, of the *Dixie*, off Porto Rico, July 26, 1898. This letter again is not written with any doubt or question of the efficiency of the commercial blockade then being maintained by the *New Orleans*—Captain Folger—but is wholly from the standpoint of the doubt of the efficiency of the blockade as a military blockade; that is, as able to cope with the armed force that might come out of San Juan Harbor, i. e., the cruiser *Isabella II*, the torpedo boat destroyer *Terror*, and others which Captain Sigsbee, of the *St. Paul*, had driven back in, and which were again the object of concern on the part of Captain Folger. The letter has this one significance on its face. It opens with this idea, which runs through it:

> Captain Folger kept me through the night of the 24th, as he had information which led him to believe that an attack would be made on his ship during the night.
>
> There are in San Juan, Porto Rico, the *Terror*, torpedo gunboat; the *Isabella II*, cruiser; a torpedo boat, and a gunboat. There is also a German steamer, which is only waiting an opportunity to slip out.

Why does he make this statement? The blockade was not inefficient commercially, for up to this time no vessel had eluded him. The German steamer mentioned in this very letter of Commander Davis, which had waited for an opportunity, had never been able to come out! He himself had captured the *Olinde Rodrigues!* The very next sentence of Commander Davis's letter explains the reason why Captain Folger wanted more ships—that is, only for armed conflict with the enemy, and not for the purpose of commercial blockade. The language is: "It is Captain Folger's opinion that the enemy will attempt to raise the blockade of San Juan, and it is my opinion that he should be reenforced there with the least possible delay." It was the reenforcement of Captain Folger to prevent the success of the enemy in an attempt to raise the blockade of San Juan by an attack upon the *New Orleans* by the vessels in San Juan.

There is no report, or the slightest suggestion whatsoever of his lack of ability to maintain an effective commercial blockade, which he had always done. The sole suggestion which began the letter and which ends it is his possible danger in a conflict with the enemy—that is, a naval battle which might result in the raising of the blockade of San Juan. This concern, that by a naval battle the blockade of San Juan might thereafter be raised by the defeat of the American cruiser, showed conclusively that in the mind of Captain Folger at the time there was then and had been theretofore an existing effective commercial blockade. If the enemy might thereafter raise this blockade, there then would be put

upon the United States, under the authorities we have above quoted, the necessity of reestablishing by due notification to neutrals. This is the meaning of this letter in the light of all the reports of practical efficiency as to the commercial blockade and in the light of the capture of the *Olinde Rodrigues*, demonstrating the effectiveness of the blockade at the port of San Juan—this, we say, was the only meaning of these reports, the doubt of strength to cope with the force of the enemy.

That doubt of military and naval strength to cope with the force of the enemy may exist as to all blockades. If the *New Orleans* (Captain Folger) standing 6 miles off Morro had been strengthened by a dozen vessels, he might not have increased the effectiveness of the commercial blockade, but simply have multiplied his force uselessly. He would however have strengthened the military blockade, although he might not even then have made himself impregnable as against the hostile attack of the fleet of the enemy. If the effectiveness of a commercial blockade is to be measured by the impregnability of the blockading force in attack by the enemy, no blockade can ever with certainty be said to be effective. Indeed, there is no such principle in international law, the fixed principle being that the blockade remains effective if practically effective, and is legal and binding until it has been raised by an actual driving away of the blockading force of the belligerent in armed conflict with the enemy. Until this result happens the neutral trader has no right to ask whether a military blockade, as against the possible superior strength

of the enemy's fleet, is effective. He is concerned with and only with the commercial blockade, and we have shown that if he has notice and in defiance of notice attempts to violate an actual blockade and is captured, the only measure required of the belligerent as to him is that the blockade was dangerous for him to enter, and after notice actual capture demonstrates its effectiveness. The neutral trader can not speculate upon the result of a possible future armed conflict, nor can he demand as a measure of effectiveness of blockade for himself that which might ultimately become necessary as a means of military effectiveness; that is, impregnability against the enemy's armed naval attack.

Not only does this view appear upon the face of these reports and is their obvious inherent purpose, but this more fully appears by the affidavits of Commander Davis and Captain Folger, which are in evidence and make clear the meaning of these letters, to wit: That the commercial blockade was, in their judgment, effective by reason of what they had actually accomplished and by reason of their confidence in what they could do practically in keeping vessels out of San Juan; and that these letters had reference, as appears upon their face, only to the possible armed conflict with the enemy's force of vessels in San Juan. In reply to claimant's contention that the position taken by Captain Folger of the *New Orleans* and Captain Davis of the *Dixie*, in their affidavits, that reenforcement was wanted solely for the military blockade, in view of a possible attack, and not in aid of the commercial blockade, was an afterthought—we submit that this is unfair criticism and wholly unwar-

ranted by the facts, for both the letters of Captain Davis and Captain Sigsbee show on their face that the possible *attack of the enemy* was expressly the *occasion of both letters* and the reenforcement was asked specially and only in that connection, to prevent the existing blockade from being raised.

3. *The cases of the Franciska and the Nancy.*

This efficiency of the blockading force not only demonstrated by practical experience, but further testified to here by Captain Folger, commanding, and Commander Davis, on the spot, and by the official reports of Commander Emory, containing the detail of this effective, practical work, will have the largest consideration of this court. Indeed, in the case of *The Franciska*, Spinks' Prize Cases, 111, Dr. Lushington accepted the affidavit of Sir C. Napier, who in that case deposed that "on the 17th of April he placed the ports of Libau, Windau, and the Gulf of Riga under strict blockade, and the *Conflict*, the *Cruizer*, the *Archer*, and the *Desperate* were stationed off that coast with others to maintain the blockade." The fact is that the blockaded ports and coast were about one hundred miles in extent, and upon this statement Dr. Lushington says (p. 116):

> I can see no reason to suppose that a force of three or four steam vessels was not perfectly adequate to blockade the coast of Courland, from Libau to Lyser Ort, a distance of less than a hundred miles. Indeed, I am satisfied that evidence to establish the fact according to precedent and the law of this court has been adduced to justify the conclusion that the force appointed to blockade that coast was adequate to an efficient discharge of that duty.

If in 1855 four vessels of the type of these English vessels at that date were *perfectly adequate* to blockade two ports and the Gulf of Riga, a distance of about 100 miles, *a fortiori*, the *New Orleans*, the modern cruiser, representing in herself several units of the vessels mentioned by Sir C. Napier, was perfectly adequate to blockade the one port of San Juan with its single entrance and population of about 20,000 inhabitants.

Again, in the case of *The Nancy* (1 Acton's Privy Council Cases, 64), Sir W. Grant reversed the judgment of the court below and held that "under particular circumstances a single vessel may be adequate to maintain the blockade of one port, and cooperate with other vessels at the same time in the blockade of another neighboring port." This is even a stronger case than the case at bar, for in the case of the *Nancy* there was not only the blockade of Trinity the port in question, but there was cooperation in the blockading of another port more than 7 miles distant. On the question whether the frigate of that day (and she must have been a sailing ship, for it was in 1809) was completely adequate for the service required to be performed, Sir William Grant said:

> As it appears the commander on that station considered the force employed completely adequate to the services required to be performed, we feel it necessary to rely on his judgment.

That case, again, was a question simply of commercial blockade of the port of Trinity, and at page 65, *idem*, the *Actress*, the *Freedom*, the *Adrian*, and the *Eagle* were all condemned by Sir William Grant under the operation of the same principle.

4. *As to the admissibility of the reports and affidavits.*

While the authorities establish that the court will take notice of laws and judicial decisions of treaties and proclamations by the President, and of the rules and regulations of the principal departments of the Government, as well as of various other facts and matters generally known within their jurisdiction, and may even notice an official statement made by the head of one of the branches of the Executive Departments which relate to the records under his control, it has been decided that there is no rule requiring courts to take notice of orders issued by a military commander. This determination would seem to include the case at bar.

(See, for the principles upon this subject, *Marbury* v. *Madison*, 1 Cr., 137; *Lamar* v. *Micou*, 114 U. S., 218; *Brown* v. *Colorado*, 106 U. S., 95; *The Scotia*, 14 Wall., 170; *Armstrong* v. *United States*, 13 Wall., 154; Prize Cases, 2 Bl., 635; *Brown* v. *Piper*, 91 U. S., 37; *Caha* v. *United States*, 152 U. S., 211; *Heath* v. *Wallace*, 138 U. S., 573; *Nix* v. *Hedden*, 149 U. S., 304; *Burke* v. *Miltenberger*, 19 Wall., 519.)

It is therefore submitted that in strictness it would extend unwarrantably the principle of judicial notice to admit without explanation isolated official statements which might vitally affect the case, and this, too, after the appellees had an opportunity below to examine witnesses on the subject.

We do not, however, desire to resist contentiously the consideration of these documents. Submitting them, therefore, to the judgment of the court, should not the

affidavits also be considered? If this were a regular application for further proof, and further proof were ordered, it should be taken by depositions under a commission, according to rule 12 of the court. This rule was adopted at February term, 1816, with special reference to prize, as shown by the case of *The London Packet* (2 Wheat., 371). See also Mr. Justice Story's remarks in *The George* (2 Gall., 249). The earlier method of taking proof in prize causes, both in England and America, was usually by affidavits and other papers introduced without any formal allegations in the discretion of the court, the more solemn proceeding of plea and proof not often being resorted to. (See Sir William Scott's letter to Mr. Jay, p. 1 of Mr. Justice Story's notes on the Principles and Practice of Prize Courts; id., p. 23; *The Frances*, 8 Cr., 348; *The Magnus*, 1 Rob., 31; 1 Wheat., p. 503, Appendix.)

In the United States, affidavits on both sides were formerly admitted, (*The Frances, supra; The Sally*, 1 Gall., 401).

As this is not a formal application for further proof, and as the discretion of the court is particularly ample with reference to evidence in prize causes, in which the common-law rules of evidence are not applied, we submit that the affidavits should properly be received and considered. Under the English practice proof by affidavit on the part of the captors may be admitted under the special direction of the court (*The Adriana*, 1 Rob., 313). In *The Harmony*, (2 C. Rob., 322) successive affidavits on the part of the claimant were accepted, and in *The Amy Warwick* (2 Sprague, 150; Fed. Cas., No. 343)

Judge Sprague declined to decide on formal order for further proof that affidavits were inadmissible, and thought that less strictness should be required of a party merely offering counter proof.

We therefore submit that under all the circumstances of the case, and on principle as well as by authority, the court may properly accept the affidavits offered, and thus give the captors an opportunity to explain the meaning of the statements made.

5. *As to the complaint that the passengers' testimony was not taken.*

In reply to the contention of the claimant that the duty of the district attorney in the court below was to take the testimony of all the passengers that were on board the ship, we submit that it has never been the practice to take the statements of the passengers. Indeed, it is not contemplated that passengers shall be examined; the interrogatories are obviously not framed for them; they are not supposed to be aware of the facts relating to the vessel, her destination, and cargo, which are peculiarly within the knowledge of the master and crew. No doubt they might have been examined on behalf of the claimants upon the order for further proof. The books all speak of the witnesses *in preparatorio* as the captors' witnesses. (Story, Principles and Practice of Prize Courts, p. 16; Rule 16, Rules in Prize Cases in the Southern District of New York, which appear to have been generally adopted in the various districts during the civil war.) It is not usual to examine more than four or five witnesses in the first instance. (*The Elizabeth*, 8 Fed. Cas., p. 463.) In

that case, where the crew consisted of twenty-one persons, it was objected that only the master and the cabin boy were produced as witnesses before the prize commissioners, the court stating that, under the existing twelfth prize rule, the captor shall produce three or four of the company or persons who were captured with the captured property; and in case the capture be a vessel, the master and mate or supercargo must be two. During the revolutionary war cruisers were instructed to bring in one or more witnesses from the prize, and private armed vessels to bring in the master and one or more of the principal persons.

However, in this case, out of abundant caution, the district attorney did take the deposition of Julien, a priest and one of those who signed the statement addressed to the master appearing in the supplement to the printed record (fol. 24). The testimony of this one passenger was actually taken by the prize commissioners and disclosed an impression on his mind that the *Olinde Rodrigues* was bound for San Juan if she could enter (see fol. 26 of the record).

The district judge, on first hearing, at folio 152 of the record, discredited this witness, but this he did, not because of anything appearing in the record and not because of anything which he himself has put upon the record, and what was the cause of discredit does not appear. We therefore submit that before this court, no cause of discredit appearing on the record, and being unimpeached, and no contradictions being shown in his own statement, and the district judge himself not giving to this court any reason for discrediting the witness, the deposition

not being taken before him, the evidence of this witness is to be regarded as equally trustworthy as the others. For this court can only decide this question of fact as the district judge could decide it, that is, on the written depositions as they appear in evidence.

Moreover, if we take the unsworn statement of these passengers as it is set forth in the letter to the captain, annexed to his test affidavit, the court perceives how wholly ignorant they are as to maritime matters and the particular matters in issue in this cause. By reference to page 9, folio 21, of the addition to the record, the plan that these passengers drew and signed their names to is itself a burlesque. San Juan is put at the extreme east of the island of Porto Rico, and the cruiser *New Orleans* is put about 60 miles east of San Juan and directly north of St. Thomas! Porto Rico itself is turned nearly upside down, and the distances are wholly impossible in every aspect. There is nothing more ludicrous and hopelessly ignorant than this chart, both as to locality, distance, and bearings.

The only intelligible fact in their communication bearing on this question is the fact, which they could well perceive, as follows: "The cannon shot being fired, the *Olinde Rodrigues* turned larboard directing itself towards the American cruiser" (fol. 21). The vital point in this whole case is confirmed, therefore, by their statement—that is, that the *Olinde Rodrigues* turned to the *New Orleans* only after the shot was fired, and in this statement they contradict the captain of the *Olinde Rodrigues*, who, as we have shown in the main brief, testified that upon the appearance of the *New Orleans* he went

toward her before the shot was fired, and who again (p. 5, fol. 10 of additional record) represented in his letter to the ambassador of France, "I hoisted the flags and went towards her. She fired."

On one of the turning points of this case, therefore, the question of fact that could be seen by all, the passengers concur with the officers of the *New Orleans* to the effect that the *Olinde Rodrigues* turned only after the shot, when danger compelled her obedience.

Furthermore, these unsworn statements of passengers were received as a mere exhibit to the captain's test affidavit and along with his bare assertions in the statement or letter requesting to make an additional explanation. This was irregular, and might have been objected to. The cases are all clear that the claimants ought not to be indulged with a subsequent opportunity to explain damaging statements made upon their first examination and after they know the pressure of the cause. (Mr. Justice Story, in *The Pizarro*, 2 Wheat., 227.) It is obvious that the claimants have no just ground of complaint. The passengers might have been examined on behalf of the claimants under this order for further proof below. But claimants did not offer them, although this court may now, if so disposed, take this unsworn statement of passengers, crude and unintelligible as it is.

6. *Complicity of owners.*

The contention of the claimants that "there is no precedent of a vessel captured for violating a blockade without the complicity of the owner" (p. 7 of brief) is without any merit. We have quoted several cases in our

main brief, and the principle is established in international law that the act of the owner is not necessary; it is only necessary that the act of his agent appear at the time to be one of actual violation of the blockade. (Story, Notes on Principles and Practice of Prize Courts, p. 72.)

Again, in this case it appears that the claimant is a corporation, and that the agents of this corporation at Cape Haitien and Port au Prince, points of departure, furnished the master bills of health and manifests on Spanish account by which he could run the blockade of San Juan; and that the agent of the company at San Juan also telegraphed the master of the *Olinde Rodrigues* that he would *have to take* fifty first-class passengers from San Juan (fol. 87), thereby showing a concurrence in the thoughts and acts of the agents of this claimant company to enable the master to violate the blockade. In the light of this testimony it is idle to say that the claimant company has not connived at the violation of the blockade. It did, by its agents and by its master concurrently, everything it could do to enter San Juan.

The statement at page 2 of Mr. Govin's brief for claimant that "there is uncontradicted evidence that her owners directed the captain not to enter the port of San Juan," is without any foundation in this record. No evidence of this kind appears anywhere. Counsel do not refer to any part of the record as sustaining this statement. On the contrary, as shown in our main brief, the agents of the claimant company combined in three ports to have the *Olinde Rodrigues* run the blockade.

Pherivong, master of the *Olinde Rodrigues*, swears: "On outward voyage at each port I warned *the agent of*

my company * * * that I would not touch at Porto Rico on the return" (fol. 87). Nevertheless he swears that on his return "at Porto Rico and Cape Haitien we found in the papers given us by *our agents* a bill of health and a manifest of no cargo for Spanish ports that we had not demanded" (fol. 87).

It thus appears that the agents of the claimant company, even after notice, were furnishing the captain with bills of health and manifests for San Juan. Again, on the 14th of July the claimant company, *by its agent at San Juan*, cabled to Captain Pherivong to come to San Juan.

Captain Pherivong swears:

> Returning to Cape Haytien on 14th of July at 11 o'clock * * * they gave me on my arrival a dispatch from the agent at San Juan, saying that we would have to take fifty passengers, first class, and to hasten our journey by one day.

So it conclusively appears that the claimant company, *by its agents* in three ports, was urging the captain to violate the blockade, stating the reasons and providing the means therefor, and by this record this is the only evidence of any instruction, express or implied, from the owner, and it is directly opposed to claimant's contention.

7. *Position of New Orleans off San Juan.*

Referring to the fourth ground of the claimant that "the Government has failed to prove the effective character of the blockade in question, and that the facts show the reverse," we beg to refer to the statement of

fact made by claimants in this connection at page 17, to wit, that the *New Orleans* "was compelled by reason of the land fortifications to be stationed at a distance of 10 or 12 miles at sea" from San Juan.

For this statement of fact there is no foundation in the record. No witness has testified to this effect, and the positive testimony of Captain Folger, of the *New Orleans*, and of Lieutenant Rooney, navigator of the *New Orleans*, is directly to the contrary.

Captain Folger, at folio 167, page 73, of the record, says: "The previous day [the 16th of July] we lay within 6 miles of Morro all day long, bearing south. We were north of Morro, just outside the range of her guns."

And Lieutenant Rooney, navigator of the *New Orleans*, at page 155, folio 322 of the record, says: "Our custom—Captain Folger's custom—and habit was to remain between 6 and 7 miles from the Morro."

It therefore conclusively appears that the *New Orleans* was not compelled to be farther than 6 miles from Morro, from which position she commanded the entrance to the port, as well as 6 miles to the north, eastward and westward, and by her speed could reach, as we have shown in our main brief, any point of circles of very much larger diameter within a few minutes.

On this vital question, therefore, in this case, the fact, as stated by the claimant in his brief at page 17, without referring to any portion of the record for support, is utterly without foundation.

8. *Position of "Olinde Rodrigues" when captured.*

Finally, we call attention to the gross inconsistencies of the several positions assumed by claimant as to the location of the *Olinde Rodrigues.* Her master swears she was on a S. 69 E. course, 9 miles offshore and 7 or 8 miles east of San Juan when captured (p. 37, fol. 79). The second captain, Landgren, swears it was 4 miles east of the port of San Juan and 9 miles away (fol. 69). The log of the *Olinde Rodrigues* claims that she was on a S. 73 E. course and to have passed San Juan 8½ miles offshore (log, p. 46, Record). The letter of the passengers to Captain Pherivong states that when they first noticed the *New Orleans'* smoke they were 10 miles offshore to the northeast of Morro (fol. 20, additional record). But so utterly untrustworthy and contradictory are all these statements in view of the accurate charting by cross-bearings of the *New Orleans* by Lieutenant Rooney at 9 a. m., fixing the point C on his chart as the pivotal point in this case, that the claimant is finally forced to abandon all these impossible positions, demonstrated to be false, and accept the facts of position and location as contended for by the United States.

We call particular attention to the concluding passage (pp. 10, 11) of the brief of Mr. Govin for claimant, where he says:

> The testimony is clear that she was between 4 and 5 miles from the *New Orleans* when the shot was fired. The testimony is clear that when the two vessels stopped and came together they were 2 or 3 miles east of the port of San Juan, and consequently

> the *Olinde Rodrigues* must have been north of the port of San Juan, at least 5 or 6 miles from shore, when the shot was fired.

This is our contention in the main, and its admission is fatal to the claimant's case. We have demonstrated this in our main brief (pp. 37–56).

This final admission of claimant's counsel has these elements in it:

(1) The *Olinde Rodrigues* was between 4 and 5 miles from the *New Orleans* when the shot was fired.

(2) When the two vessels came together they were 2 or 3 miles east of the port of San Juan (the *Olinde Rodrigues* having come 5 miles to the *New Orleans* in an easterly direction), therefore from a point about 2 miles west of north and south line through Morro when shot was fired.

(3) The *Olinde Rodrigues* was north (or rather north by west) of San Juan when shot was fired, 5 or 6 miles distant from the shore.

This admission of counsel, under their signature, that the *Olinde Rodrigues* was 5 or 6 miles from shore, north of Morro, puts the *Olinde Rodrigues* within the range of Morro guns, and this fact alone condemns her. She can not be within the range and protection of the enemy's batteries and claim to be innocent. Her admitted location there carries with it a presumption *de jure* of guilt under the cases that we have quoted in our main brief from Sir William Scott, adopted by this court, holding that if the course of a vessel carry her under the enemy's batteries, or tends to draw the cruiser pursuing her on that course under the enemy's batteries, the presumption

of guilty intention to violate the blockade is irrebuttable, and condemnation follows as matter of law. (Pp. 34–37, 52–56, appellant's main brief.)

9. *Further proof.*

In reply to the argument of claimant requesting, in event of condemnation, an opportunity to put in further proof as to violating the blockade, we beg to call the attention of the court to the fact that by the order of the court below, granting further proof (fol. 230), both to the captors and to the claimants, the time was limited, and that after the captors had put in their proof, the claimants, without adducing any further proof, went to a hearing of this cause on the merits, and yet claimed to reserve their right of adducing further proof, as it may hereafter be advised (fol. 379).

Of this remarkable procedure the court below was moved to say:

> There has been considerable delay in the taking of the additional testimony, owing to the absence from the country of the chief witnesses; but all the testimony in behalf of the captors is now in, and the case is before the court upon a motion to discharge the vessel, proctors for the claimants reserving the right to introduce testimony hereafter, *if the motion is denied*. Without passing upon the question, whether, in a proceeding in admiralty, a party having an opportunity to offer testimony, failing to do so, may draw the opinion of the court upon his adversary's case, and thereafter be permitted to reply to it—a question of practice which is at least doubtful, as counsel were duly warned (fol. 383).

For the court below had warned the claimant's counsel that there was necessity to put in his evidence (if indeed he had any), the court saying:

> "I should be greatly surprised if counsel should consider that there is nothing in the case to require them to put in some testimony (fol. 356). There is testimony of witnesses that the ship was heading directly for San Juan (id.)."

It thus appears that the claimants deliberately, and after warning, did not put in any testimony in the court below according to their opportunity, and to ask now for further proof after the long delay, and getting opinion of lower court and this court, is against the settled practice of this court when a cause in admiralty is before this court finally on its merits, with all the proofs that might have been put in below.

After the court has looked into this cause, if there is any doubt in the mind of the court on this record, the court may *sua sponte* order further proof, but as matter of right to ask this court to send the cause back to the court below on an issue of fact now before this court finally for decision on the merits is indeed unprecedented.

Moreover, it is to be observed that the order of the district court for further proof was limited in the subject-matter of the proof as follows:

> *Ordered*, That the captors have ninety days from the date hereof to supply further proof as to the entry of the *Olinde Rodrigues* into the port of San Juan, Porto Rico, on July 4, 1898, and as to the courses and movements of said vessels on July 17, 1898, and that the claimants may thereafter have

such time to offer testimony *in reply* as may seem proper to the court.

By this express limitation of the subject-matter of the further proof the movement of the *Olinde Rodrigues* and of the *New Orleans* on July 4 and July 17, and the claimant's reply thereto, all other testimony was incompetent in the court below, and therefore the letters which the claimants now seek to introduce in evidence do not come within the limits of this order for further proof and, again, do not appear to have been introduced in evidence by the claimants in the court below, because the record shows that the claimants did not introduce any evidence after the further proof taken for captors, but, on the contrary, went to a hearing of the cause expressly claiming the right to introduce further proof thereafter, *if the motion should be denied*. But the motion was granted, and under the claimants' express terms his reservation of further proof is at an end.

Indeed the principle is, that upon further proof allowed and taken and the cause heard, it is not opened again. This is settled procedure.

At page 429, Upton's "Maritime Warfare and Prize," third edition, it is thus stated:

> On return of further proof allowed, if any taken, the cause is again heard in its order upon the original and supplementary proof, and not again opened.

10. *As to costs.*

The court below not having dealt with the question of costs, this matter is wholly in the control of this court and on all the facts of the case. In asking for a reversal of

the judgment of the court below and a condemnation of the steamship, we would ask also for costs and expenses against the claimants, especially in view of the fact that the court had offered to the claimants the bail of this steamship, under its order dated September 16, 1898 (fol. 232), by simply giving the bond of the claimants' company without sureties, in the sum of $125,000, which the claimants have not availed themselves of, thus entailing continuous large expense, which is indicated in part at folio 374. These peculiar facts call for the exercise of the discretion of the court as to costs. Even on decree for restitution, this court has heretofore repeatedly, under the peculiar circumstances of the case showing justifiable conduct on the part of the captors, decreed both costs and expenses against the claimants. See in full the following cases, where such costs and expenses against the claimants on restitution were allowed to the captors:

The Dashing Wave, 5 Wallace, 170.
The Science, 5 Wallace, 178.
The Volant, 5 Wallace, 179.
The Jenny, 5 Wallace, 183.

And see further on the subject:

The Mary, 9 Cr., 126.
The Venus, 5 Wheat., 127.
The London Packet, id., 132.
La Amistad de Rues, id., 385.
The Springbok, 5 Wall., 1.
The Sir Wm. Peel, id., 517.

A fortiori the court has the power in this case to impose upon the claimant company the costs and expenses, in addition to the condemnation, which is the usual rule

of condemnation in all cases in admiralty. In the case of the *Langdon Cheves* (2 Mason, 58; 14 Fed. Cas., p. 1111, case 8063), in reference to certain custody fees of a vessel which had been condemned as prize, Mr. Justice Story, sitting on circuit, says:

> In favor of the party entitled to the fees of custody the court will certainly upon his application order them in the first instance to be paid out of the proceeds in court. He has an equitable lien on them for his charges incurred about the property; but these charges are properly and ultimately chargeable against the claimant in cases of condemnation.

11. *Conclusion.*

In conclusion, therefore, we submit that on this whole case the blockade of San Juan was, as a commercial blockade against the neutral trader, effective in fact; it was practically effective in that it was dangerous; that danger was known to the *Olinde Rodrigues* because of her warning on the 5th of July, entered in her log. It was again known and evident to her on the 17th of July, when, defying the signal, she attempted to enter San Juan until she was finally brought to by a shot from the *New Orleans*, almost within range of the battery of Morro. All of these facts, under the authorities and principles which we have cited, rendered this blockade legal and effective independent of the question of the effectiveness of the military blockade, which concerned only the strength of the enemy, with which the *Olinde Rodrigues* had nothing to do, and upon which she could

not act, until in fact the blockade had been raised by an actual driving off of the *New Orleans* by the enemy's fleet, which under the evidence before this court never did occur.

The case therefore remains as argued in our main brief, and we confidently submit the same as one of lawful capture by the armored cruiser *New Orleans* of the *Olinde Rodrigues* while attempting to violate the blockade of San Juan on the 17th of July; the United States Navy Department, the Commander in Chief, and Captain Folger, of the *New Orleans*, then and there all acting under the principles and precedents of international law and of our own decisions and the instructions of our Government.

Upon this legal capture we ask for condemnation of the steamship and reasonable costs and expenses to the United States and the captors in this suit.

Respectfully submitted for the United States and the captors.

JOHN W. GRIGGS,
Attorney-General.
HENRY M. HOYT,
Assistant Attorney-General.
J. P. KENNEDY BRYAN.

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No. 704.

Brief of Jones for Appellee

Office Supreme Court U. S.
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Clerk.

Filed April 10, 1899.

the Supreme Court of the United States,

October Term, 1898.

THE UNITED STATES,
Appellant,

AGAINST

E STEAMSHIP "OLINDE RODRIGUES," LA COMPAGNIE GENERALE TRANSATLANTIQUE,
Claimant-Appellee.

No. 704.
Prize.

Brief in Behalf of Claimant-Appellee.

EUSTIS, JONES & GOVIN,
Proctors for Claimant.

WARD K. JONES,
Of Counsel.

Supreme Court of the United States,

October Term, 1898.

THE UNITED STATES,
Appellant,
against
THE STEAMSHIP *Olinde Rodrigues*, La Compagnie Generale Transatlantique,
Claimant-Appellee.

No. 704.
Prize.

Brief in Behalf of Claimant-Appellee.

STATEMENT.

This is an appeal by the United States from an order of the District Court of the United States, for the District of South Carolina, discharging and directing the release of the French mail steamer *Olinde Rodrigues*, which had been captured by the U. S. Cruiser *New Orleans* off the port of San Juan, Porto Rico, on the 17th of July last, for an alleged attempt to force the alleged blockade of that port, claimed by the Government to be in effective existence at that time.

After the capture of the steamer, she was brought to Charleston, South Carolina, and a libel was thereafter filed by the United States in the District Court for that District praying that she might be condemned as lawful prize of war. Certain testi-

mony *in preparatorio*, under the standing interrogatories, was taken of *some* but not all of the witnesses on board the steamer, and upon that testimony a motion was made in behalf of the claimant for the discharge of the vessel. Pending the consideration of that motion the United States Attorney made an application to the Court for an order allowing further proof to be taken concerning the facts attending the capture, and a decision of the Court was thereafter rendered (see Opinion, p. 60 of Record) holding that no case had been made against the steamer, but that an order would be made on the Government's application for further proof. This order appears at page 105 of the Record and is to the effect that the captors have ninety days from the date thereof to supply further proof as to the entry of the *Olinde Rodrigues* into the Port of San Juan, Porto Rico, on July 4th, 1898, and as to the courses and movements of the said vessel on July 17th, 1898; and, furthermore, that the claimant should thereafter have such further time to offer testimony in reply as may seem proper to the Court.

After the close of the further proofs in behalf of the captors, the claimant moved for an order discharging the vessel upon two grounds:—First, because there was no proof in the cause showing that the alleged blockade of San Juan was of the close and effective character required by the law of nations, and the practice and declarations of the Government of the United States, to lawfully render and expose a neutral ship to condemnation for attempting to enter, or for entering, the said port; and secondly, because the proofs as they then stood, irrespective of any replying proofs on behalf of the claimant, were insufficient in law to warrant or justify a decree of condemnation; and the motion expressly reserved the right and privilege on the part of the claimant of adducing such further proof in its behalf as it might be advised, under the order of the Court already mentioned, in the event that

the motion should be denied. This motion appears at page 184 of the Record, folio 379.

The District Judge thereupon heard the said motion, and in deciding it (page 185 of Record) passed upon one question only, namely, the effectiveness of the blockade, and expressly declined to decide the other branch of the motion, namely, as to the sufficiency of the evidence to justify the conclusion that there was an attempt to enter the port (page 194 of Record, folio 399), stating that the case, in the event of his decision upon that branch of the motion not being sustained, would require a re-examination, and, as additional testimony might perhaps be offered, it was not considered either proper or necessary to express any opinion upon that point.

The case comes before this Court, therefore, upon the single question as to the effectiveness of the blockade of San Juan at the time of the capture, and although it is observed that the brief, and perhaps the oral argument of counsel for the United States, is principally devoted to the *ex parte* and incomplete evidence as to the fact of attempted entry, this brief and the presentation of the case of the claimant in this Court at this stage of the cause will be limited (aside from a few general observations), to a discussion of the only point decided by the District Judge, which, if overruled by this Court, will either necessitate a recommitment of the case to the District Court for additional testimony on the part of the claimant, or an order for further proof in this Court, and then a consideration of the case as a whole, in respect to the charge of attempting to enter the port.

After the argument of the motion to discharge the vessel upon the grounds above stated, and pending its consideration by the District Court, an application was made by counsel for the claimant to the judge, upon notice to the District Attorney, for a requisition upon the Navy Department for all des-

patches and correspondence between the commanders of vessels successively claiming to blockade the port of San Juan and the Navy Department with respect to the effectiveness of the same. This request was made because the Navy Department refuses to give information concerning its records for use in suits before the courts, except upon the call of the Court.

The District Judge made this call, and yet, in response to it, as the claimant is now advised, but one telegram, namely one from Captain Sigsbee of the *St. Paul*, which had been on the blockading station, was furnished. In the appendix to the report of the chief of the Bureau of Navigation of the Navy Department, however, there appear two other despatches, one from Captain Sigsbee and the other from Commander Davis of the *Dixie*, the latter representing the views of Captain Folger of the *New Orleans*, which captured the *Olinde Rodrigues*, both of which materially bear upon the question of the sufficiency of the blockade. These despatches appear respectively on pages 224 and 225 and 642 and 648 of the above-mentioned "Appendix to the Report of the Chief of the Bureau of Navigation" of the Navy Department, and are made the subject of a motion that the same be inserted into the Record in this case; and assuming that this application will be granted, those despatches will be considered in the discussion of the case on the part of the claimant.

POINTS ON BEHALF OF CLAIMANT-APPELLEE.

First.

There was gross irregularity in the taking of the depositions in this case materially affecting the weight to be accorded to the Government's side of it.

It may be stated at the outset that, according to the view of the claimant, a gross irregularity was committed by the Government in the examination of witnesses *in preparatorio*. Section 4615 of the Revised Statutes provides, among other things, that "the commanding officer of any vessel making a capture shall secure the documents of the ship and cargo, including the log-book, with all other documents, letters and other papers found on board, and make an inventory of the same, and seal them up, and send them, with the inventory, to the court in which proceedings are to be had, with a written statement that they are all the papers found, and are in the condition in which they were found; or explaining the absence of any documents or papers, or any change in their condition. He shall also send to such court, as witnesses, the master, one or more of the other officers, the supercargo, purser or agent of the prize, and any person found on board whom he may suppose to be interested in, or to have knowledge respecting the title, national character, or destination of the prize."

By Section 4618 of the Revised Statutes it is made the duty of the District Attorney, among other things, to see "that the proper preparatory evidence is taken by the Prize Commissioners, and that the Prize Commissioners also take the depositions *de bene esse* of the prize crew, and of other

transient persons cognizant of any facts bearing on condemnation or distribution."

Section 4622 of the Revised Statutes, furthermore, provides, among other things, that "the witnesses shall not be permitted to see the interrogatories, documents, or papers, or to consult with counsel, or with any persons interested, without special authority from the court; and witnesses who have the rights of neutrals shall be discharged as soon as practicable."

A large number of passengers, as well as the officers of the *Olinde Rodrigues*, were sent to Charleston on the ship, and those passengers should have been examined by the District Attorney and their depositions taken *in preparatorio*. It is apparent, however, that this was not done, inasmuch as there appears on page eight of the Addition to the Record, filed April 1st, 1899, that many of the passengers had knowledge of the destination of the ship and the circumstances attending her capture, because of their statements in respect thereof there set forth at length. These passengers include Mr. Firmin, a lawyer by profession, formerly Minister of Foreign Affairs to Haiti; Mr. Monerat, representative of commerce; Mr. Andreoh, merchant, Port-au-Prince; Mr. Altieri, merchant, Cape Haitien; Mr. de Lara, merchant, Donudurean; Father Picarda, prefect at the Seminary of Port-au-Prince; Abbé Plessis, missionary curate and Mr. Faure, representative of the House of Anglade of Bordeaux, all respectable and intelligent men; and it is apparent, from an examination of the case, that only one of these passengers was examined by the District Attorney, namely, Julien, a novitiate preparing for the priesthood, whose testimony the District Judge, in his first decision, expressly declared to be without any credit whatever. (See fol. 152 of Record).

Had the District Attorney performed his duty of taking the depositions of all the witnesses who thus appear to have had knowledge concerning the facts attending the capture, the probability is that there

would have been no order for further proof, and that this vessel would have been discharged within a few days after her capture. This irregularity has put the claimant in the position of being obliged on its part to take the testimony of these witnesses, and in the orderly course of procedure, this could only be done after the Government had exhausted its case.

Second.

This case is emphatically sui generis, and the capture in question was made under circumstances having no precedent in the reported cases.

Although the only question before this Court in the present appeal is the question as to the effectiveness of the blockade of San Juan, there are certain striking aspects of the case so different from those of any in the history of the law of blockade as to deserve preliminary notice, and these features seem to us to present certain considerations, which, in our judgment, should have great weight in aiding the Court to form a correct view of the situation.

These considerations are as follows:

A. There is no precedent of a vessel captured for violating blockade without the complicity of the owner.

In all the cases which have come under our observation—and it must necessarily be so—an attempted breach of blockade must be intended by the *owner or charterer of the vessel.* He directs and instructs the commander of his vessel to undertake this perilous enterprise. He knows what will be the consequences of failure or success. It is his

property that he is willing to expose to capture and confiscation in order to secure large profits if his venture should prove successful. It is impossible to conceive a case where the directing authority of the principal so absolutely and completely controls the acts of his agent. The preparations for an attempted breach of blockade, the purposes of such an attempt, are matters for his decision, and it is for this reason that the most trustworthy incriminating evidence of the attempted offence is invariably furnished by the offending vessel, such as her papers, her cargo, instructions to the commanding officer, etc., and that the search *aliunde* for evidence of the vessel's guilty intention rarely becomes necessary, because it would be misleading.

The motive and purpose of the owner of a vessel intending to run the blockade are thus clearly ascertained. It is like finding stolen property in the possession of an accused thief, and evidences of a guilty intention are concomitant with the preparation necessary for such a perilous enteprise.

The total absence in this case of a scintilla of evidence which is invariably furnished by the vessel in cases of condemnation for an attempted breach of blockade certainly constitutes the basis for a conclusive presumption of the innocence of the owner, and established the fact that he did not contemplate or intend that his vessel should be used for the purpose of running a blockade.

There is not a single fact, circumstance or incident that would justify the slightest suspicion that in this case the owner connived at, consented to or approved any attempted breach of blockade by this vessel.

We do not maintain that this pregnant and overwhelming fact of the innocence of the owner of the vessel absolutely controls the decision of the case, but we do maintain that it forces the Government to rest its claim for condemnation upon some very novel theory which is not in accord with the usual facts in such cases, and which can only be founded

upon a suspicion or conjecture; that is, that the master of the vessel, of his own volition, decided on his own responsibility to attempt to run the blockade at San Juan.

Upon the theory thus presented this case is *sui generis*. It has no analogy to any other case, and it has no parallel in the history of prize cases.

To reach the conclusion that the master of a vessel could assume the responsibility of thus sacrificing the valuable property entrusted to his care and guardianship by his principal, the owner, the Court must convict the captain of an act of criminal folly, of the wanton betrayal of an important trust, of an almost wilful sacrifice of the property of his principal, and of exposing him to heavy damage suits by the owners of the cargo, which it would be impossible to reconcile with the faithful service that the owner has a right to expect from the master of his vessel, by reason of his responsible and confidential employment.

The owner of the vessel being innocent, it is not unreasonable that the Court should require the Government to establish, by clear and convincing proof, that the captain of this vessel had a motive and purpose in attempting to run the blockade. The confiscation of a neutral's vessel is the severest penalty known to international law. While it is a right accorded to the belligerent, it is the exercise of an exceptional jurisdiction widely differing from the right to capture the enemy's property. In both cases the capture and condemnation result from the acts of legitimate warfare. In the case of capture and condemnation for an attempted breach of blockade Judge Betts, in the case of *Hallie Jackson*, clearly states the reason upon which this rule of international law is based. He says: "The neutral merchant becomes a participator with the enemy in any undertaking or device to violate a blockade, and his property is thereby made to share a common fate with the enemy's itself." The *Hallie Jackson*, Blatch. Pr. Cas., 41; 11 Fed. Cas., 291.

In this case the Government has presented no proof whatever that this captain had any motive or interest in attempting a breach of blockade. Some inducement ought to be clearly established. He had everything to lose and nothing to gain personally. The theory that at the suggestion of somebody he could increase his number of passengers by stopping at San Juan is refuted by the cable sent by the captain from Cape Haytien to the effect that, having been notified of the blockade, he would not stop at San Juan. What guaranty could he have given that, even if he went into San Juan, he could bring out those passengers? It would also require a great deal of courage for people to take passage on a steamer liable to be captured. This theory is based upon a palpable improbability and does not deserve the serious attention of the Court, for the almost certain large loss by capture does not correspond with the possible small profit.

If any ship owner were asked if such a case were possible he would answer that no captain would dare assume the responsibility of committing such a foolhardy, madly rash and indefensible act.

B. It is in no sense a necessary reflection upon officers of the Navy for the courts to declare particular captures illegal.

Another preliminary observation deserves attention. Naval officers cannot and do not claim to be infallible. In their trying positions cases of excess of zeal not infrequently occur. Captors are required to bring the case of the captured vessel before a Prize Court in order to determine the question whether strong suspicion, which will excuse a capture in the case of an attempted blockade, was well founded and is justified by the facts and evidence, or whether the naval officers committed an error of judgment. The very object of bringing in a ship for judicial enquiry is to ascertain the facts which at the time of capture may be obscure or doubtful.

During our Civil War the *Trent* affair is a notable case. Captain Wilkes received the thanks of his Government for boarding the *Trent*, yet his Government had to disavow his act as illegal.

In the recent war with Spain a Federal Judge (Southern District of Florida) decided that the capture of the *Catalina* and the *Miguel Jover was* illegal, and the Attorney General withdrew the appeal of the Government in both cases, being satisfied that the naval officers were not justified in making these captures. The United States Government is called upon to pay nearly half a million of dollars for captures on the high seas of Canadian sealing vessels, adjudged by a competent tribunal to have been illegal and unjustifiable. The law imposes upon the Court the responsible duty of revising and approving or disapproving of the acts committed by naval officers. The capture may be excusable on the part of the naval officers, although illegal, but the Court cannot justify its judgment of confiscation of an innocent neutral's property, except upon clear and conclusive proof presented by the Government in such cases.

C. The decisions of our Courts respecting captures during our Civil War should be viewed with regard to the special condition of things then existing, and not be applied fully to cases arising out of our recent war with Spain.

Another consideration which, it is thought, the Court should bear in mind in deciding this case is the inapplicability of the decisions of our American Courts with respect to captures made in our late Civil War.

This is especially true with regard to the law of blockade, for, as observed by Mr. Hall, a writer of the highest authority, (Hall Int. Law, 4th Edn., p. 735), "During the American Civil War the courts of the United States *strained and denaturalized the principles of English blockade law to cover*

doctrines of unfortunate violence." This had its cause, doubtless, in the fact that our Civil War was really for the preservation of the national existence, and from necessity the law of blockade was stretched to its utmost tension in spite of the protests of various neutral European nations.

At an early stage of that contest Congress passed an act authorizing the President of the United States to absolutely close all the ports of the insurrectionary States, and thus practically laid an embargo upon the entire neutral commerce of the world with those ports. (See Act July 13, 1861, Ch. 3, Sec. 4. 12 Stats. at L., 256). And although the diplomatic correspondence of our Government shows that this extreme measure would not be put into operation except under the pressure of great necessity, and that, therefore, we would keep in constant view the rule respecting blockades laid down by the Treaty of Paris, yet the policy of the executive branch of the Government, and the decisions of the judiciary in upholding it, seems to us to be in entire harmony with the spirit of the legislation just referred to. Upon this point we quote the remarks of Mr. Seward to Mr. Adams, our Minister to Great Britain, under date of July 21st, 1861:

> "Nothing has occurred to change this condition of affairs, (*i. e.*, the good understanding between the two governments), unless it be the attitude which Lord John Russell has indicated for the British Government in regard to an apprehended closing of the insurrectionary ports and the passage of the law of Congress which authorizes that measure in the discretion of the President.
>
> It is my purpose not to anticipate or even indicate the decision which will be made, but simply to suggest to you what you may properly and advantageously say while the subject is under consideration.

First.—You will, of course, prevent misconception of the measure by stating that the law only authorizes the President to close the ports in his discretion, accordingly as he shall regard exigencies now existing or here, after to arise.

Secondly.- The passage of the law, taken in connection with the attendant circumstances does not necessarily indicate a legislative conviction that the ports ought to be closed, but only shows the purpose of Congress that the closing of the ports, if it is now or shall become necessary, shall not fail for want of power explicitly conferred by law. When, on the 13th of April last, disloyal citizens defiantly inaugurated an armed insurrection by the bombardment of Fort Sumter, the President's constitutional obligation to suppress the insurrection became imperative.

But the case was new, and had not been adequately provided for by express law. The President called military and naval forces into activity, instituted a blockade, and incurred great expense, for all which no direct legal provisions existed. He convened Congress at the earliest possible day to confirm these measures if they should see fit.

Congress, when it came together, confronted these facts. It has employed itself less in directing how and in what way the Union shall be maintained than in confirming what the President had already done, and in putting into his hands more ample means and greater power than he has exercised or asked.

The law in question was passed in this generous and patriotic spirit. Whether it shall be put into execution to-day or to-morrow, or at what time, will depend on the

condition of things at home and abroad, and a careful weighing of the advantages of so stringent a measure against those which are derived from the existing blockade."

See Wharton's Digest Int. Law, Vol. III, pp. 358-359.

In the late war with Spain our government rested under no such stress of necessity as that which existed during our Civil War; and it is, therefore, respectfully submitted that the policy of our government and the decisions of our courts in the cases growing out of the Civil War have little, if any, application to cases of blockade now arising, as they must be considered as having been rendered in circumstances altogether exceptional.

Third.

In order to justify the capture of a neutral vessel upon the charge of attempting to violate a blockade it is necessary for the captors to prove, as part of their case and as the foundation of the right to capture, all the facts necessary to render the captured vessel liable to forfeiture, and the prerequisite and fundamental fact must be proof of the effectiveness of the blockade.

In the case of the *Betsy*, 1 Rob., 93, Sir William Scott held that "to constitute a violation of blockade *three things must be proved*: 1st, the existence of an *actual blockade;* 2d, the knowledge of the

party supposed to have offended; and 3d, some act of violation either by going in or coming out with a cargo laden after the commencement of blockade."

In commenting upon this decision of Sir William Scott, Mr. Owen, in his work on "Declaration of War" (London, 1889, p. 106), says: "The learned Judge rightly placed first the *proof of the existence of the actual blockade*; for a shipmaster can scarcely be charged with violating a blockade of the existence of which there is *no proof*."

This rule, as far as we have extended our examination of the cases and authorities, is not only absolutely uncontroverted, but seems to be universally accepted.

The Government, in the presentation of this case, failed to introduce a syllable of evidence to show either that there was a blockade of San Juan, in fact, or that it was effectively maintained. It seems to have been thought that the President's proclamation declaring a blockade was sufficient; but this is a mistake. The mere proclamation of the President declaring a blockade does not satisfy the rule that there must be proof of its existence and effectiveness. This is clearly established.

In "Manning's Law of Nations" (London, 1875, p. 403) it is said:

> "The rule is explicit that the actual *existence* of blockade is necessary to involve the penalties of breach of blockade. A declaration of blockade, *unaccompanied by the fact of blockade*, does not establish a blockade. It was so determined by our Lords of Appeal in the war with Napoleon I. Admiral Jervis declared the West India Islands in a state of blockade, 'but the Lords held, that as *the fact did not support the declaration*, a blockade could not be deemed legally to exist.'"

We are aware that in the case of the *Circassian* (2 Wall, 155) the distinction between simple blockades (*i. e.*, blockades by a naval commander without governmental notification) and public blockades (*i. e.*, by proclamation and notification by the government seeking to establish it) was pointed out, and that the Court remarked that, "in a case of a simple blockade, the captors are bound to prove its existence at the time of capture; while in the case of a public blockade, the claimants are held to proof of discontinuance, in order to protect themselves from the penalties of attempted violation;" but, as the case of the *Circassian* must be read with reference to the facts before the Court, this remark of the Chief Justice has no application to this case, because the question in the case of the *Circassian* was whether or not a blockade, which was duly proved to exist so far as the naval forces necessary to maintain it were concerned, was in fact *raised or discontinued* by the capture of *New Orleans*, and the burden of proof, the Court held, rested on the claimants.

We are also aware of a remark of Judge Betts in the case of the *Hallie Jackson* (Blatch Pr. Cas., 41; 11 Fed. Cas., 290), "that there was in fact an effective blockade at the port on the arrival of the brig is demonstrated by her arrest there." But this was a case of a vessel captured as *enemy's property*, and the question of blockade was only subsidiary. Moreover, the point does not appear to have been argued, nor does it figure at all as the *ratio decidendi* of the case, and the remark of the Judge, therefore, is nothing more than one of those observations indulged in in a running discussion of the case, and should be regarded as a mere *obiter dictum*—an *obiter dictum*, too, in direct conflict with authorities in which the question has been considered as a controverted or litigated point.

Fourth.

Not only has the Government failed to prove the effective character of the blockade in question, but the facts show the reverse.

The proofs on the part of the Government show that there was but one warship (the *New Orleans*) stationed at San Juan; that the range of her heaviest guns, at their greatest elevation, was six miles; that he was attempting to blockade a port with a wide roadstead or entrance to its harbor, and compelled, by reason of the land fortifications, to be stationed at a distance of ten or twelve miles at sea in the face of three miles of shore batteries mounted with heavy guns, besides the inner fortifications of the port; and the despatches of Captain Sigsbee and Commander Davis (which will be noticed further on) also show that several Spanish war vessels were in the harbor threatening attack.

We contend that the presence of one war vessel is insufficient, under the law of nations, to constitute a blockade of such a port as San Juan, fortified and defended as the proofs show.

How many vessels may be necessary depends upon circumstances always to be proved by the government attempting to justify the capture.

In order to be effectual, a blockade, according to Sir William Scott, must be maintained "by stationing *a number of ships* and forming, as it were, *an arch of circumvallation* round the mouth of the prohibited port. Then, *if the arch fails in any one part*, the blockade fails altogether."

The *Arthur*, 1 Dodson, 425.
The *Stert*, 4 Rob., 65.

In the case of the *Arthur* (*supra*) it was distinctly held that a blockade was *not effectual* when it was attempted to be maintained by *a single ship.*

It is true in the principal case (*i. e.*, the proceedings for condemnation) the vessel captured was condemned; but the point now referred to was either not raised, or, if raised, the condemnation was based upon a supposed measure of retaliation. The point contended for now was clearly established, *i. e.*, that there must be a sufficient number of ships to form an "arch of circumvallation," and that one vessel cannot form that arch.

So firmly established is this rule as to the effectiveness of a blockade to bind a neutral vessel, that it has been even held that if several ports are included in a declaration of blockade, when only one of such ports is in fact blockaded, *the whole declaration is nullified*, and a neutral cannot be condemned for an attempt to break the blockade of that port which is really invested.

> See Douglas Owen on "Declaration of War," (London, 1889), 107, citing the *Henrik & Maria*, 1 Rob., 146; *The Mercurius, Ib.*, 83; *The Betsy, Ib.*, 93.

Mr. Hall, in his work on "International Law," (4th Edition, London, 1895), at page 719, says:

> "It is agreed that for a maritime blockade to be duly set up and maintained—
>
> 1. The belligerent must intend to institute it as a distinct and substantive measure of war, and his intention must have in some way been brought to the knowledge of the neutrals affected.
>
> 2. It must have been initiated under sufficient authority.
>
> 3. It must be maintained by a *sufficient* and *properly disposed force*."

The counsel for the captors in the presentation of his argument at the oral discussion of this case in the District Court, sought by a forced reading of Mr. Hall's work, to lead the Court to suppose that

the above stated rules were those of the continental nations only, and that they were at variance with the English and American rule. We observe, too, that the same contention is made in this Court. But a reference to Mr. Hall's treatise (p. 728) shows that the difference between the English and American and the Continental rules is only (so far as the present question is concerned) as to the *disposition* of the blockading squadron and *not* as to its effectiveness.

He says:

> "The opinions held by the majority of modern continental writers as to the conditions under which a blockade is efficiently maintained, differ in several important respects from the principles which guide the practice of England and the United States. They may, perhaps, be summarised as follows: The immediate entrance to a port must be guarded by *stationary* vessels in such number as either to render entrance impossible, or at least to expose any ships running in *to a cross-fire from the guns of two of them.* Any accidental circumstance which makes it temporarily possible to go in puts an end to the blockade, and justifies a vessel in attempting to enter. As, for three-quarters of a century, by far the most extensive experience in blockades has fallen to the share of England and the United States, these opinions, whatever their abstract merits, labour under the disadvantage of being inconsistent with the most authoritative usage upon the subject. They are also much more rigid than the principles embodied in the Declaration of Paris, and accepted by the great majority of civilized nations. It is hardly necessary, therefore, to inquire upon what ground they are stated to represent existing law. The signatary powers of the Declaration of Paris, which is perfectly in harmony with English doctrine, were satisfied with declaring that 'blockades

in order to be binding must be effective—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.'" (Hall's Int. Law, 4th Edition, pp. 728, 729 and 730).

And in the notes on pages 728, 729 and 730 of the same work the following summary of the law of European countries appears:

"The opinions of the various writers are essentially identical, but differ from one another on some points. Heffter (Sec. 155) requires that vessels shall be 'stationnes en permanence et en assez grand nombre pour empecher toute espece de communication avec la place ou le port investi'; but he does not hold that temporary absence entails cessation of the blockade. Ortolan (ii, 328) thinks that blockade of a harbour is not effective unless 'toutes les passes ou avenues qui y conduisent sont tellement gardees par des forces navales permanentes, que tout batiment qui chercherait a s'y introduire ne puisse le faire sans être aperçu et sans en être détourne;' and considers (344) that if weather has caused the temporary absence of the blockading squadron, although the blockade is not raised, it is open to a vessel to attempt to enter, and if taken, to allege ignorance of the fact of blockade. Calvo (Sec. 2567) declares that the belligerent must have a sufficient force, so disposed as to become 'le maitre de la mer territoriale qu'il occupe, et à pouvoir en interdire l'accès à tout navire étranger;' apparently he requires that the ships shall be anchored. Hautefeuille (Tit. IX, Chap. ii, Sect. i, Par. 1) says that 'le blocus n'existe qu'autant que le belligérant qui attaque un port place devant ce port un nombre de batiments de guerre suffisant pour en commander

les abords par leur artillerie;' and holds (Sect. 111, Par. 2) that interruption from any cause terminates the blockade. To Gessner (179) 'la définition de la première neutralité parait exemplaire;' a blockaded port is therefore one where there is, 'par la disposition de la puissance qui l'attaque avec des vaisseaux arrêtés et suffisamment proches, un danger évident d'entrer.' He exhausts the language of invective in assailing the existing doctrine and policy of England, and is fully satisfied with the American practice during the Civil War. It is not for me to attempt his extrication from the complicated inconsistencies in which he has thus involved himself. Pistoye and Duverdy (i, 365) confine themselves to cautious and accurate language. 'Il faut,' they say, 'que la place soit investie par des forces suffisantes pour en rendre l'entrée périlleuse aux navires qui voudraient s'y introduire.'

The proposed Règlement des Prises Maritimes, adopted by the Institut de Droit International, provides that a blockade is to be considered effective, 'lorsqu'il existe un danger imminent pour l'entrée ou la sortie du port bloqué, à cause d'un nombre suffisant de navires de guerre stationnés ou ne s'écartant que momentanément de leur station.' It adds that 'si les navires bloquants s'éloignent de leur station pour un motif autre que le mauvais temps constaté le blocus est considéré comme leve.' Ann. de l'Institut, 1883, p. 218. The effect of the suggested rules would approach very nearly to the English practice."

(Note 1, pp. 728–9.)

"A few treaties contain stipulations in agreement with the views of the foreign writers whom I have quoted. I am not

aware that any blockade has ever been conducted under their provisions. In 1742 France and Denmark agreed that a blockaded port should be closed by two vessels at least, or by a battery of guns on land, and the same stipulation was made between Denmark and Genoa in 1789. The treaty between Holland and the Two Sicilies in 1753 prescribes that at least six ships of war shall be ranged at a distance slightly greater than gun-shot from the entrance, or else that the blockade may be maintained by shore batteries and other works. The First Armed Neutrality, in 1780, laid down that blockade must be effected with vessels stationary and sufficiently near to produce evident danger in entering. The Second Armed Neutrality put forward the same doctrine; but Russia, in her treaty with England in 1801, consented to substitute the words, 'arrêtés ou suffisamment proches,' for 'arretes et suffisamment proches,' and the only treaty since concluded in which stringent stipulations are made is that between Denmark and Prussia in 1818, by which it was required that two vessels should be stationed before every blockaded port. Hautefeuille, Tit. IX, Chap. 11, Sect. i, § 1; Gessner, 159; De Martens, Rec. VII, 263."

(Note 1, pp. 729-30.)

"With reference to the meaning of the Declaration of Paris, Lord Russell, in 1863, wrote as follows: 'The Declaration of Paris was in truth directed against what were once termed "paper blockades"—that is, blockades not sustained by any actual force, or sustained by a notoriously inadequate naval force, such as an occasional appearance of a man-of-war in the offing, or the like. . . . The interpretation, therefore, placed by Her

> Majesty's Government on the Declaration was, that a blockade, in order to be respected by neutrals, must be practically effective. . . . It is proper to add that the same view of the meaning and effect of the articles of the Declaration of Paris, on the subject of blockades, which is above explained, was taken by the representative of the United States at the Court of St. James (Mr. Dallas) during the communications which passed between the two goverments some years before the present war, with a view to the accession of the United States to that Declaration.' Lord Russell to Mr. Mason, Feb. 10, 1863; ap. Bernard, 293."
>
> (Note 1, p. 730.)

For a further review of the authorities upon this point the Court is referred to

Risley's "Law of War," (London, 1897), p. 242.

Walker's Manual of Public International Law, (London, 1895), p. 212.

Manning's Law of Nations, (London, 1875), p. 402.

Walker's Science of International Law, (London, 1893), p. 516.

Wheaton's International Law, (3 English Edition, London, 1889), p. 672.

Fifth.

But whatever may be the law as laid down by the reported decisions and the authoritative text writers the fact that there was no effective blockade in this case is conclusively disposed of by the despatches of Captain Sigsbee, and also the despatch of Commander Davis, which have been laid before the Court, the later representing the views of Captain Folger of the *New Orleans*, the ship that made the capture.

In the presence of the despatches that have been presented to the Court from the "Appendix to the Report of the Chief of the Bureau of Navigation of the Navy Department," it seems to us that the question of the effectiveness of the blockade is absolutely foreclosed against the Government, and it appears to us almost idle to discuss the question. The despatches are explicit to the effect that in the opinion of two successive commanders of vessels attempting to blockade San Juan, including the commander of the vessel which captured the *Olinde Rodrigues*, that *the blockade was not effective*. These despatches are as follows:

Captain Sigsbee:

> "I venture to suggest that *in order to make the blockade of San Juan positively effective, a considerable force of vessels is needed off that port*, enough to detach some occasionally to cruise about the Island."

> "*U. S. S. St. Paul*,
>
> MOLE ST. NICHOLAS, Haiti, June 27, 1898.
>
> SIR:
>
> Instead of leaving the blockade of San Juan to-night to proceed direct to New York

for coal, in conformity with your order to me to proceed when necessity arose, I decided yesterday to come here instead, in order to recommend to you promptly an increase of the blockading force off San Juan, where the *Yosemite* now remains alone, and where the *St. Paul* was alone before the *Yosemite* arrived. Had I remained off San Juan until tonight my coal would not have brought me here and permitted me to go to New York also; I therefore decided to sacrifice one day, in order that my recommendation to you should not be delayed for a number of days, as would have been the case had I proceeded direct to New York.

It was immediately demonstrated to the *St. Paul* on her arrival off San Juan that she would not be permitted to approach the batteries undisturbed. In fact, Spanish war vessels endeavored to entice her under the batteries, which, as you know, are very heavy.

I beg to respectfully suggest that the difficulties of blockading the single port of San Juan are greater than those to be met in blockading Havana, where there are no Spanish war vessels and no torpedo-boat destroyers, and where ports are blockaded both to the eastward and westward, thus giving flank support. Vessels intending to run the blockade of San Juan can, owing to the short length of Porto Rico east and west, make telegraphic communications with San Juan for advice with reference to the disposition of the blockading force, and this they can do within a few hours of their expected arrival at that port. This can be done by visiting the east and west anchorages of the Island or St. Thomas. San Juan being well to the windward in the trade region, and having no land influences to windward of it, the seas off that port are

naturally continuously rough day and night, making boarding both prolonged and difficult, especially for auxiliary crews. *When a single vessel constitutes the blockading force she will oftentimes be compelled to make the visit close in to the port, where she will be uncommonly exposed to attack during the visit.*

I was the more impelled to leave San Juan a day in advance of my original intention by my belief, based on reports from the harbor of San Juan, that the torpedo-boat *Terror* could not, within the single day devoted to my visit here, repair the damage done to her by the *St. Paul*, in regard to which I refer you to another letter of this date. It is advisable to constantly keep the *Terror* in mind as a possible active force; but leaving her out of consideration, the services to be performed by the *Yosemite*, of blockading a well-fortified port containing a force of enemy's vessels whose aggregate force is greater than her own, is an especially difficult one. If she permits herself to be driven away from the port, even temporarily, the claim may be set up that the blockade is broken. It was still more difficult for the *St. Paul* when she was alone on the blockade. The *St. Paul's* speed was reduced, by an accident to her starboard engine, within two knots of the maximum speed of the *Yosemite*. That made but little difference, except in chasing, for the reason that she also had to maintain the blockade as against any force of the enemy.

"I venture to suggest that, in order to make the blockade of San Juan positively effective, a considerable force of vessels is needed off that port, enough to detach some occasionally to cruise about the Island. West of San Juan the coast, although bold, has outlying dangers, *making it easy at present*

for blockade runners having local pilots to work in close to the port under the land during the night.

Very respectfully,

C. D. SIGSBEE,
Captain, U. S. N., Commanding.

The Secretary of the Navy."

"U. S. S. DIXIE,
Off Porto Rico, July 26, 1898.

Sir:

I have the honor to report that in obedience to your order of the 24th instant, I stood into San Juan, Porto Rico, and found only the *New Orleans*, Captain Folger, blockading off that port.

Captain Folger kept me through the night of the 24th, as he had information which led him to believe that an attack would be made on his ship during the night.

There are in San Juan, Porto Rico, the *Terror*, torpedo gunboat; the *Isabella II*, cruiser; a torpedo-boat and a gunboat; there is also a German steamer, which is only waiting an opportunity to slip out.

The *New Orleans* is the only ship I have sighted on the coast of Porto Rico. Captain Folger had no knowledge of the whereabouts of the *Prairie* or *Montgomery*.

Captain Folger directed me to report that one ship was inadequate for the blockade of San Juan, and there should be more than two ships off that port to establish an effectual blockade.

The *New Orleans* could not approach within less than six miles of the entrance of San

Juan without drawing the fire of the batteries, mounting 8-inch guns well served. It is Captain Folger's opinion that the enemy will attempt to raise the blockade of San Juan, and it is my opinion that he should be re-enforced there with the least possible delay.

On the morning of the 25th, in the execution of your orders, I went to San Juan to collect any force that might be there, but found no United States ships there. I took as a prize the French steamer, *Manoubia*, of Marseilles, from Martinique, bound for Sagua la Grande, Cuba. I have made her the subject of a separate letter to the Commander-in-Chief, which I herewith enclose.

I am, sir, your obedient servant,

C. H. DAVIS,
Commander, Commanding.

Capt. F. J. HIGGINSON, U. S. N.,
Commanding U. S. S. Massachusetts, Senior Officer Present."

Sixth.

The force of Captain Sigsbee's despatches, and the opinion of Captain Folger that the blockade was not effective are not overcome by the explanation attempted by the Government.

The Government, however, seeks to make a distinction between a commercial blockade and a military blockade, as if the military operations of defending the place besieged were to be left out of

consideration in determining the effectiveness of a blockade; and counsel have presented an affidavit of Captain Folger to the effect that when he alluded to the ineffectiveness of the blockade he referred only to the danger of attack, &c., and an affidavit of Captain Davis is also offered to support this statement.

Although invidious personal criticism is always disagreeable, and the necessity for it often to be deprecated, we cannot refrain from observing that these statements of Captain Folger and of Captain Davis have all the qualities of an afterthought. They are, to say the least, in singular contrast with the clear and emphatic opinion of Captain Sigsbee who expressly refers to the inadequacy of *one vessel to intercept the ingress and egress of blockade runners;* and he also refers to a German steamer inside the port of San Juan ready to slip out when occasion might present itself. The egress of the latter vessel from the port might, obviously, take place under the convoy of the Spanish naval vessels, or at some time when an opportunity presented itself to pass out without such convoy. Captain Sigsbee, as we say above, speaks of the inadequacy of one vessel to blockade the port, not only as to the entry and exit of commercial vessels, but to defend herself against the naval force lying inside the port. This opinion that one vessel is inadequate for a blockade means, of course, *any one* vessel, and means not only the *St. Paul* and the *Yosemite*, but of any single vessel which might be sent to perform blockade duty, which necessarily includes the *New Orleans*. Capt. Folger's letter must also, as it seems to us, be considered as *affirming the opinion of Captain Sigsbee*, of whose communication to the Navy Department, he must have been aware. And if his opinion, at the time he authorized Commander Davis to make the statement, and which he admits that he did make, was that the blockade was effective for commercial purposes though not for his defense in case of an attack, *he could easily*

have made that distinction at that time. Moreover, it is apparent to us, from the situation, that Captain Folger really intended to convey in this message the opinion that the blockade was ineffective as an entirety, *i. e.*, commercially, as well as from a military standpoint, because he could not have any reasonable fear of an attack that would necessarily involve the risk of his vessel, inasmuch as her speed as a cruiser would have enabled her to have easily retreated and saved herself from injury or destruction, in case a superior naval force were to issue from San Juan, for it is not shown that any of the Spanish vessels inside the port of San Juan were of equal speed to the *New Orleans*, though their combined armament might be greater. We, therefore, say that Captain Folger must have had in his mind, when he authorized Commander Davis to represent that in his opinion the blockade was ineffective, that *it was ineffective commercially as well as from a naval point of view.* The pretence, therefore, of Captain Folger at this late day, that he intended to say merely that the blockade was effective for commercial purposes, though not for his defense in case of an attack, looks to us as in excusably disingenuous.

But the pretence of Captain Folger is untenable and unsound as a matter of common sense. What is a blockade? The many definitions resolve themselves into one answer, namely, an *effective closing* of a port or a portion of a seacoast. This closing must, it seems to us, be an entirety, and necessarily includes every fact and circumstance connected with it; and it also seems to us to especially include all the means, military or otherwise, of resisting such effective closing, or preventing its continuance. If the fact of blockade is susceptible of division so as to leave it to be justly said that it may be effective for commercial purposes though not for the necessary military and naval operations, it is also, for the same reason, susceptible of further subdivision so as to admit the pretence that a

blockade might be effective so far as *small and slow vessels* are concerned, whilst not effective for *large and swift vessels;* for sail vessels, though not for steam-vessels; for open boats operated by hand power, though not for decked vessels operated by sails, etc. This would be an absurdity on its face; but, it seems to us, it is no less absurd than the pretence that there may be at the same time a blockade for commercial intercourse, whilst there is no blockade so far as the military and naval investment of the place is concerned.

Not only is the pretence that a commercial blockade may exist, although at the same time there may be no effective blockade for military and naval purpose, absurd on its face, but the authorities are against it.

In the case of Vrouw Judith, 1 C. Rob., 150, Sir William Scott says:

> "A blockade is a sort of circumvallation round a place, by which *all* foreign connection and correspondence is, as far as human force can effect it, to be entirely cut off."

Again, in Juffrow Maria Schroeder, 3 C. Rob., 154, the same celebrated jurist declared:—

> "A blockade may be more or less rigorous, either for the single purpose of watching the military operations of the enemy and preventing the egress of their fleet, as at Cadiz, or on a more extended scale to cut off all access of neutral vessels to that interdicted place, which is strictly and properly a blockade, for the other is, in truth, no blockade at all, as far as neutrals are concerned."

And in Snow on International Law, so much relied upon by the counsel for the Government in this case, we find the following passage:

> "Blockades to be obligatory are to be effective—that is to say, maintained by a sufficient force to shut out the access of the *enemy's ships and other vessels* in reality."

It would, therefore, seem from these authorities that, in considering the question of the effectiveness of a blockade, the Court cannot fail to take account of the military or naval force with which the place is defended.

Furthermore, it is a rule that if the force claiming to maintain a blockade is driven away by the enemy's ships, the blockade is broken; or, as stated by Mr. Hall, "the blockade ceases if an enemy's force succeeds, for however short a time, in driving off the squadron which is charged with maintaining it" (citing The *Frederick Molke*, 1 Rob., 87; The *Columbia*, 1 Rob., 156; The *Hoffnung*, VI Rob., 115; *Vos and Graves v.* The Un. Ins. Co., II Johnson (American), 187; *Radcliff v.* Un. Ins. Co., VII Johnson, 53).

(Hall International Law, 4th Edition, p. 727.)

This rule is also stated in the second paragraph of "Instructions to Blockading Vessels and Cruisers," issued by the Navy Department on the 20th of June, 1898, under the head of General Order No. 492, where it is said:

> "If the blockading vessels be driven away by stress of weather, but return without delay to their stations, the continuity of the blockade is not thereby broken; but if they leave their stations voluntarily, except for purposes of the blockade, such as chasing a blockade runner, *or are driven away by the enemy's force*, the blockade is abandoned or broken."

If, as thus laid down, a blockade is broken by the enemy's ships driving away the blockading squadron, then it seems to us to be a necessary consequence of this rule, that the admitted presence of the enemy in such force as to *effect the breaking of the blockade*, necessarily implies that in these conditions the blockade is, of necessity, *not to be considered as effective*.

Seventh.

The case as to the fact of the attempted entry of the *Olinde Rodrigues* into the Port of San Juan, at the time of her capture being, as already shown, not decided by the District Judge, and resting as on evidence only partly taken, the case should be recommitted to the District Court for further testimony, in the event that this Court shall hold that the District Court was in error as to the effectiveness of the blockade.

We have already called the attention of the Court to the fact that the testimony of a number of witnesses on board the *Olinde Rodrigues*, at the time of her capture, was not taken by the Prize Commissioners.

The case comes before this Court, also, upon the single finding of the District Judge as to the effectiveness of the blockade, there being no finding whatever as to the fact of an attempted breach of it.

We have also pointed out that the case was disposed of by the District Judge upon a mere motion based upon the insufficiency of the Government's proofs, and that this motion was made at a time when there was an outstanding order, allowing the claimant to introduce counter-proofs.

We shall, therefore, close this brief without noticing the case of the Government on the question as to whether the *Olinde Rodrigues* was or was not attempting to enter the port of San Juan at the time of her capture.

We will, however, hand up with this brief the comments upon this branch of the case made by Mr. Govin, one of counsel for the claimant, and submitted to the District Court, the only changes being in the references to the printed record, instead of the stenographer's notes.

Considering this branch of the case generally it may be remarked that all the testimony, as to the course or heading of the *Olinde Rodrigues* on the morning of her capture, comes entirely from persons not connected with her navigation, and almost exclusively from persons not on board of her, and taking their observations at a great distance, and, so far as those on the *New Orleans* are concerned, without any definite knowledge as to the position of their vessel.

All this evidence is necessarily unsatisfactory and defective in its character upon the point in question.

Without going into minute calculations, it may be remarked that if the Court will take a chart it will be seen that the difference between a heading for the port of San Juan by the *Olinde Rodrigues* and a heading for St. Thomas, on the course which her officers testify she was heading, is only a few points of the compass.

This fact, taken in connection with the evidence which shows that the situation of the *New Orleans* could not be exactly, or anything like exactly, located, renders any evidence from her navigators, especially in view of the fact that they were at a great distance off, extremely uncertain, unsatisfactory and inconclusive in its very nature.

The rule in admiralty is firmly established that the testimony of the captain, officers and men navigating a vessel as to her position and course, is entitled to greater weight than that of witnesses on other vessels, or wherever elsewhere situated, who judge or form their opinions by observation at a distance.

The *Havana*, 54 Fed. R., 411.
The *Hope*, 4 Fed. R., 89.
The *Erastus Wiman*, 20 Fed. R., 248, 249.
The *Alberta*, 23 Fed. R., 807.
The *Alexander Folsom*, 52 Fed. R., 411; S C., 3, C. C. A., 165.

Keeping this rule in view, we think that if this Court should decide to examine that branch of the case it will find the evidence too inconclusive to form the basis of a decision.

Eighth.

The destruction of the useless bill of health for San Juan, which in fact formed no part of the ship's papers, was a circumstance of no substantial importance in this case.

A great deal was said in the District Court, and much comment is made in this Court, upon the fact that the captain of the *Olinde Rodrigues* had a bill of health for San Juan, which upon his arrival at Charleston was destroyed.

The facts concerning this bill of health are such as to make this of no consequence whatever. It appears that papers of this kind are regularly furnished by the agents of the line in the different ports of the usual itinerary of the ships of the line, and that at one of these ports the agent had procured and placed on board the vessel a health clearance for San Juan, supposing, as they did, that the vessel would follow her regular itinerary. It appears furthermore, however, that as the captain, having been warned of the blockade of San Juan, had decided not to return there, another bill of health for St. Thomas was procured and the useless bill of health for San Juan was inadvertently allowed to remain in the office of the purser of the vessel, and when she arrived at Charleston, this fact having been discovered, the same was destroyed.

The captain in his examination *in preparatorio*, in answer to the interrogatories as to the ship's papers, did not mention the destruction of the San Juan bill of health. In the purser's examination, that officer, remembering the circumstance at the time, the fact was mentioned. The Captain immediately thereupon wrote a letter to the Prize Commissioners, asking for leave to appear before them and explain the circumstances under which he had this bill of health, and the reason for its destruction. His explanation appears at folios 87 and 88 of the Record, and his letter is printed in a supplement to the Record.

The District Judge, whilst commenting upon the destruction of this document as one of much impropriety, nevertheless concluded, as has often been concluded in other cases, that there was no intentional suppression, and, therefore, excused it as merely an error of judgment.

The rule, as laid down by this Court in the case of the *Pizarro*, 2 Wheat., 227, is that where concealment or spoliation of papers is open to explanation, and if the party fairly, frankly and satisfactorily explains it, he is deprived of no right to which he is otherwise entitled. Under this rule Captain Pherivong should be excused for the inadvertent destruction of this useless bill of health.

The destruction of papers, under circumstances of greater suspicion, was excused in the case of the *Peterhoff*, 5 Wall, 28, 61, so far as the innocent shipowner was concerned.

See also, The *Peacock*, 4 Rob., 185.

Lastly.

It is respectfully submitted that the order of the District Court discharging the vessel on the ground that the blockade was ineffective should be affirmed; or, in the event that this Court shall reverse the said order, the cause should be remitted to the District Court for further proceedings and for its finding and determination upon a full presentation of the evidence.

EUSTIS, JONES & GOVIN,
Proctors for Claimant.

EDWARD K. JONES,
Of Counsel.

Supreme Court
FILED
APR 10 1899
JAMES H. McKENNEY
Clerk

No. 704.

Appx. to Brf. of Jones for Appellee

In the Supreme Court of the United States,

October Term, 1898.

Filed April 10, 1899.

THE UNITED STATES,
Appellant,

AGAINST

THE STEAMSHIP "OLINDE RODRIGUES," LA COMPAGNIE GENERALE TRANSATLANTIQUE,
Claimant-Appellee.

No. 704.
Prize.

Comments in the District Court by Mr. Govin, one of Counsel for the Claimant, upon the Government's Testimony.

United States District Court,

DISTRICT OF SOUTH CAROLINA.

THE UNITED STATES OF AMERICA,
Libellant,

against

THE STEAMSHIP *Olinde Rodrigues*, Compagnie Generale Transatlantique,
Claimant.

Prize.

Supplemental Brief on the Testimony.

The evidence in this case can be divided into two parts, (1) that which comes from the ship and the examinations *in preparatorio;* and (2) that which was taken under an order for further proof granted upon the petition of the Government and the captors.

I.

There is not a scintilla of evidence coming from the ship or in the examinations *in preparatorio* to justify the claim that the *Olinde Rodrigues* attempted to run the blockade at the Port of San Juan.

The learned Judge, in an opinion filed August 13th, 1898, so finds, and the closest examination of

the character of the ship, the class of trade in which she has been engaged, and was engaged, at the time of capture; her ownership and the character of her owners; the character of her captain and officers and the nature of her cargo; the papers found on board of her and the testimony *in preparatorio* all show absolutely that she was a merchantman belonging to a well-known and regular line of steamers, La Compagnie Generale Transatlantique, and at the time of capture proceeding from Port-au-Prince to St. Thomas and Havre. And, more over, there is uncontradicted evidence that her owners directed the captain of the ship not to enter the Port of San Juan, and not a particle of evidence has been offered to show that the Captain had sufficient motive to violate these instructions and take upon himself the responsibility of taking the owner's vessel, contrary to orders, into a blockaded port, risking capture and condemnation.

II.

The testimony presented in behalf of the Government and captors must be strong enough not only to upset the presumption in favor of the innocence of the vessel established by her character, papers and examinations *in preparatorio*, but must amount to proof clearly establishing the attempt to run the blockade.

Examining the testimony of the witnesses in behalf of the Government and the captors taken at Charleston, S. C., on September 15th, 1898, under the order for further proof, we find that Captain William N. Folger, Lieut. R. L. Russell, John R. Y.

Blakley and R. G. Nelson were examined. The testimony of these witnesses is almost identical as to the point that the *Olinde Rodrigues* was making for the Port of San Juan when sighted, but as to the distance and position of the two ships from the land and from each other they all differ materially. In answer to questions tending to test the accuracy of this statement, and to questions inquiring their reasons for making this statement that the *Olinde Rodrigues* was making for San Juan, they all unanimously answer that this statement is based on the fact that the masts of the *Olinde Rodrigues*, as seen from the deck of the *New Orleans*, were open, thus indicating that the *Olinde Rodrigues* was sailing south, or towards San Juan. This is the whole case against the *Olinde Rodrigues*, as made out by the officers of the *New Orleans*, testifying at Charleston.

These witnesses, upon cross-examination, all testified that they were ignorant of the exact position of the *New Orleans*, and admitted that the fact that the masts of the *Olinde Rodrigues* appeared open to those on board the *New Orleans* would not necessarily indicate that she was sailing to the south, or towards the port of San Juan, unless the *New Orleans* were on the same line, east and west, with the *Olinde Rodrigues*, and said that if the *New Orleans* was not on the same line, east and west, with the *Olinde Rodrigues*, but to the north of the *Olinde Rodrigues* the masts of the *Olinde Rodrigues* would appear open without necessarily indicating that she was sailing south, or towards the land or on a course other than the one stated in the log of the *Olinde Rodrigues*. It may be properly stated here that whether or not the officers admitted the truth of the proposition that the two vessels must have been on the same line when sighted to have the fact of the opening or closing of the masts have any bearing on the course of either of the vessels, cannot effect the obvious truth of the proposition.

Examining the testimony of each witness sepa-

rately, we find that there are glaring inaccuracies and assertions so lightly made as to affect the character of all of the testimony given by the officers of the *New Orleans* and to justify the inference that their efforts to capture blockade runners unconsciously affected their good sense and judgment. Assuming, of course, their good faith, this whole case is quite similar to the child alone at dusk in the graveyard attributing to the tombstones the characteristics of a ghost.

Choosing a few glaring examples, we find that Captain Folger, at page 11, (fol. 166 of printed Record), states that he did not know exactly the position of the *New Orleans*, but simply estimated it from his experience, and placed it about ten or twelve miles from the coast; disputes the accuracy of the log of the *New Orleans*, and believes that his statement is more correct than that of the navigator.

On page 15, (fol. 170 of printed Record), Captain Folger makes the *Olinde Rodrigues* run four miles in three minutes, when her speed is only twelve miles an hour, and admits that either he or the officer on deck must be mistaken as to her bearing when first seen.

On page 18, (fol. 174 of printed Record), of his testimony, Captain Folger admits that he cannot tell which way the *Olinde Rodrigues* was heading, but from her apparent course seemed nearer to the south than to the east.

On page 21, (fol. 177 of printed Record), of his testimony, Captain Folger admits that the *Olinde Rodrigues* came up from the land side towards his ship, admitting our contention that the *New Orleans* was further north from the coast than the *Olinde Rodrigues*.

On page 21, (fol. 181 of printed Record), of his testimony, Captain Folger admits that the *Olinde Rodrigues*, if on the course as claimed by the claimants, was on a proper one for the Culebra Passage.

Not one statement in all the testimony of Cap-

tain Folger proves that the *Olinde Rodrigues* was not on her proper course, and his testimony is simply an opinion of an officer whose duty it was to look for blockade runners, and he, as well as all of his crew, naturally believed every ship nearing San Juan to be a blockade runner.

The testimony of Lieut. Russell is so contradictory as to be valueless. Upon direct-examination he states that the *Olinde Rodrigues* and the *New Orleans*, when they came together, were west of a north and south line running through San Juan; and upon cross-examination admits he might have been mistaken in this respect, and they could have been east of the same line.

And, furthermore, throughout his cross-examination, when stating that he did not remember important matters which he should have remembered, as, for example, about taking observations, he fails to display the frankness that an officer in his position should have exhibited.

The testimony of Lieut. Blakley is unimportant, and has also the admissions of ignorance as to the position of the *New Orleans*.

The testimony of W. N. Nelson is unimportant, and has also the admissions of ignorance as to the position of the *New Orleans*.

At the examination had in New York, October 18th, 1898, under the order for further proof, the following witnesses were examined: William Hemsler Emory, George P. Eustis, John Burns, Robert H. Todd, Sergio Noa Lara and William R. A. Rooney.

The testimony of Captain W. H. Emory has no bearing on the case, and is not commented upon.

The testimony of George P. Eustis is also unimportant.

The testimony of John Burns is also of no importance.

The testimony of Robert H. Todd is of no consequence.

The testimony of Sergio Noa Lara is the testimony of a Porto Rican, who left Porto Rico with the ostensible intention of testifying in behalf of the claimants, and on arriving here testified in behalf of the captors, and his admissions that he made false statements in order to obtain the necessary permission to leave Porto Rico, renders the inference justifiable that he either had a great deal to gain by making such desperate efforts to leave the country to testify on behalf of the captors, or that he is utterly unreliable, regarding truth lightly and willing to make any statement likely to suit his purpose.

He was a telegraph operator conveying the information by telegraph that was given by the semaphore men at the station, and not much value can be attached to this information, for these men were accustomed to see the *Olinde Rodrigues* come to the port of San Juan regularly, and upon seeing her in the horizon naturally supposed she was to enter as was her custom.

This witness Lara goes further, however, and attempts to say that of his own knowledge and with his own eyes, he could see that the *Olinde Rodrigues* was making for the port of San Juan. This is simply an opinion of the witness founded upon nothing but a desire to serve the captors, with whose counsel he had had previous conversations, which fact he denied and only admitted after a most searching cross-examination.

His only reason for stating that the *Olinde Rodrigues* was heading for the port of San Juan is stated in answer to the question on page 81, (folio 299 of printed Record): "How can you state positively that the *Olinde Rodrigues* was headed for the port of San Juan when you do not know what course she would have to take for the Culebra Passage?" He answers: "It did not take much intelligence to know when a vessel is coming in the direction of the port and when she is going

to pass along, that is known by even the most unlearned people in Porto Rico."

On page 82, (folio 299 of printed Record), he further says, in answer to the question: "Then, as I understand, it is a very simple thing to tell the direction of a vessel at a distance at sea?" Answer. "It is a very easy thing to find out if a vessel is going into the port of Porto Rico and when she is going to continue her trip."

The only witness produced by the Government and the captors whose testimony, on account of his position as navigator of the *New Orleans*, is of importance, is that of Lieut. Rooney.

But even this witness's testimony does not bear directly on the point at issue, as he admits that he did not see the *Olinde Rodrigues* until after she was captured. Did not know her position or course and did not know what course the *New Orleans* steered when making for the *Olinde Rodrigues*, and simply is positive as to the approximate position of the *New Orleans* early in the morning before sighting the *Olinde Rodrigues*, and is positive as to the position of the *New Orleans* after the capture of the *Olinde Rodrigues*.

As to her position in the early morning a short while before the capture of the *Olinde Rodrigues*, he differs from every witness produced by the Government from on board the *New Orleans*, and instead of endeavoring to place her close inshore, as other witnesses have done, so that the *New Orleans* would be upon the same line west and east with the *Olinde Rodrigues* at the time that the *Olinde Rodrigues* was sighted and her masts seen open, he fixes the position of the *New Orleans* at least fifteen miles from the coast (see log of *New Orleans*). This is probably approximate to the truth, as from the testimony of the officers of the *New Orleans*, with a full speed of 22 knots an hour, she steamed for from 25 to 40 minutes in a course towards the south, in which time she must have run between nine and thirteen miles

towards the south, which would certainly make her distance from the coast, at the time she began her chase, more than fifteen miles, as when she made the capture she was about 7¼ miles from Morro, Morro bearing almost south, and probably 7 miles from the coast in a direct line south.

Lieut. Rooney in his testimony also made careful explanations as to the different courses supposed to have been taken by the *Olinde Rodrigues*, and of the proper course for a vessel sailing from Port-au-Prince to St. Thomas. This testimony is carefully noted in charts which are in evidence; and Lieut. Rooney testifies as follows in regard to these charts:

As to the courses which counsel for the Government and the captors questioned him about, he admits at pages 113, 144, 147–8, (folios 324, 347, 348, 350–352 of printed Record), that several courses might be properly steered by a vessel going from Port-au-Prince to St. Thomas, and that one of the proper courses would be to pass about twelve miles north of the harbor of San Juan.

The fact that a certain course if continued would lead a vessel ashore does not signify that the vessel intended to run ashore, but might be followed for the purpose of obtaining a bearing, etc. It may be properly mentioned here that vessels do not sail on straight lines and follow fixed courses between two given points as a train of cars, but considerations of wind, weather, shoals, tide, etc., especially in navigating along the coast, necessitate the vessels deviating from a straight line. For the purpose of positively ascertaining their position, vessels usually run in towards the land, when practicable to find certain lights or well-known points along the shore.

On behalf of the claimants the course, as marked in the log of the *New Orleans*, was read to Lieut. Rooney, and after carefully marking it on the chart, he admitted that it was a proper course for the *Olinde Rodrigues* to take to reach Culebra

Point with a view of going to St. Thomas, (pages 129–130, folios 337–338 of printed Record).

Lieut. Rooney further testifies that a vessel bound for San Juan, on an ordinary commercial voyage, would have taken a different route, and would not have been found where the *Olinde Rodrigues* was when captured, but would have been nearer shore.

He further admits that it is probable that if the *Olinde Rodrigues* intended to go to San Juan, and avoid the *New Orleans*, she would have hugged the shore, and not been away out at sea, (pages 147–8, folios 351–352 of printed Record).

Reviewing the testimony as a whole, we find that there is not the slightest proof to establish that the *New Orleans* and the *Olinde Rodrigues* were on the same line east and west. Upon that theory alone, that they were upon the same line at a distance of about ten to fifteen miles apart, could the fact that her masts appeared open to those on board the *New Orleans* indicate that she was heading toward the south, or toward the land? It appears from the testimony of the captors themselves that the *New Orleans* was about fifteen miles, if not more, north of the coast east of Morro. It is not disputed, nor has any evidence been offered to show, that the statements made in behalf of the claimants in the log as to the position and course of the *Olinde Rodrigues* are incorrect. The *Olinde Rodrigues*, sailing on admittedly a proper course, would be drawing to the south, and the *New Orleans* being to the north of her, the closer the vessels approached the more open would the masts of the *Olinde Rodrigues* appear. All the testimony confirms this theory, which is the true one, and the explanation of why the masts appeared open to those on board of the *New Orleans*.

A reading of the evidence shows an utter lack of such certain proof regarding the posi-

tion and course of the *Olinde Rodrigues* as to satisfy an impartial mind that it was the intention of the *Olinde Rodrigues* to enter the port of San Juan, and when in addition to this weakness there is found on behalf of the *Olinde Rodrigues* undisputed proof of her intention to pass by the port of San Juan without entering it, and that no motive can be shown or has even been suggested in evidence that might lead an impartial mind to the conclusion that the captain recklessly and without motive, and in the face of a U. S. cruiser, attempted to enter the port of San Juan, it would appear impossible to anyone to believe that such was his intention.

It is also apparent that to suppose the captain of the *Olinde Rodrigues*, if endeavoring to enter the port of San Juan in violation of the blockade, would chose a bright morning instead of sailing under cover of darkness, and that instead of hugging the shore and slipping into port, he would have been eight or ten miles at sea, is to assume, without any justification, that instead of being an able mariner and an intelligent man, he was a man without sense and a commander without judgment.

In addition to the above, the *Olinde Rodrigues* when captured, was east of the port of San Juan, conclusively proving that when the shot was fired from the *New Orleans* she was north of the port of San Juan, a position she would not have been in had she intended to enter the port of San Juan. The testimony is clear that from the time she was sighted until the shot was fired from the *New Orleans*, the *Olinde Rodrigues* did not materially change her course. The testimony is clear that she was between four and five miles from the *New Orleans* when the shot was fired. The testimony is clear that when the vessels stopped and came together, they were two or three miles east of the port of San Juan, and consequently the *Olinde Rodrigues* must

have been north of the port of San Juan at least five or six miles distant from the shore when the shot was fired; and being in that position, not even by a wild stretch of the imagination could it be supposed that she was making for the port of San Juan.

The motion to discharge the *Olinde Rodrigues*, it is respectfully submitted, should be granted.

EUSTIS, JONES & GOVIN,
Proctors for Claimant.

No. 704.

App't. to Brf. of Jones for Appellee

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 704. Prize.

THE UNITED STATES, APPELLANT,

against

THE STEAMSHIP OLINDE RODRIGUES, LA COMPAGNIE GENERALE TRANSATLANTIQUE, CLAIMANT—APPELLEE.

Remarks of Captain Poirot, of the French Navy, in Reference to the Attempted Blockade of San Juan, Porto Rico, by One War Vessel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4-11-'99

THE FOLLOWING COMMUNICATION WAS RECENTLY ADDRESSED TO COUNSEL FOR THE APPELLEE BY CAPTAIN POIROT OF THE FRENCH NAVY IN REFERENCE TO THE ATTEMPTED BLOCKADE OF SAN JUAN, PORTO RICO, BY ONE WAR VESSEL.

NEW YORK, *le* 7 *Avril*, 1899.

CHER MONSIEUR JONES.

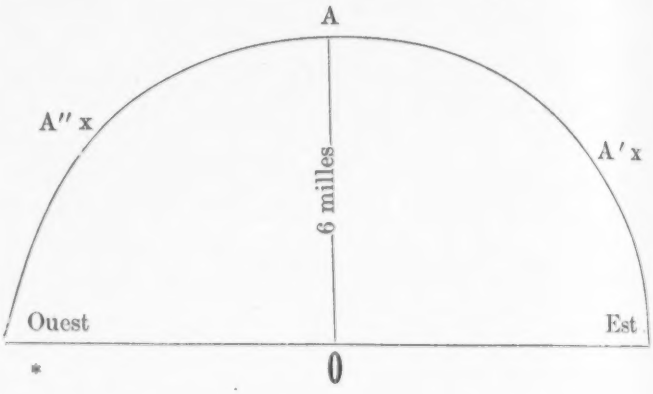
Vous m' avez demandé de vous faire connaitre mon opinion au sujet de la déclaration faite par les Commandants C. D. Sigsbée et C. H. Davis au sujet du blocus de San Juan. Je n'ai que le temps de répondre bien à la hâte à votre désir. Voici l'opinion que me permet d'énoncer mon expérience de trente années de service dans la Marine de Guerre Française, période pendant laquelle j'ai participé moimême à différents blocus dans la Mer du Nord en 1870 et dans les Mers de chine en 1884–'85.

Le Commandant Sigsbée écrit que: "In order to make "the blockade of San Juan positively effective, a consider- "able force of vessels is needed off that port, enough to de- "tach some occasionally to cruise about the island. West "of San Juan the coast, although bold, has outlying dangers, "making it easy at present for blockade-runners." * * *

Il est bien clair que, dans son esprit, il s'agit d'un blocus commercial à rendre effectif et qu'il n'a nullement en vue la possibilité d'une attaque par des forces supérieures puisqu'il s'occupe des "blockade-runners" et ajoute que si on lui envoie les navires qu'il réclame il ne craindra pas de les éparpiller en les envoyant croiser sur différents points de l'ile.

En effet un seul navire ne peut pas bloquer San Juan d'une maniére effective car San Juan est défendu par des forts qui obligent á se tenir au moins à 6 milles de l'entrée du port.

Or, que peut faire *un seul navire* dans ces conditions? Il n'a que deux lignes de conduite à suivre :



1°. Se placer devant l'entrée, *á 6 milles* en A et de l'a surveiller la passe ; mais dans ce cas, la nuit, tous les navires qui longeront la côte en venant aussi bien de l'Est que de l'ouest pourront entrer sans difficulte.

D'ailleurs cette hypothése est inadmissible, car un navire qui se trouve devant une côte ennemie, la nuit, ne peut ainsi rester immobile surtout lorsque, comme dans le cas présent, il sait pertinemment que le port bloqué posséde des moyens d'attaque.

2°. Se maintenir, en croisant sur un arc de cercle ayant pour centre l'entrée du port, et pour rayon la portée des canons des forts, soit 6 milles.

Dans cette seconde manïére de procéder qui me parait la seule possible, lorsque le navire bloqueur sera en un point quelconque de sa course en A′ par exemple il ne verra pas

* As there are three miles of shore batteries at the right of the Morro at San Juan, the base of this circle must be proportionately broadened, thus making the blockade still more difficult.

ce qui se passe dans l'ouest ; il en sera de même s'il est en A'', au point de vue des navires qui pourraient tenter d'entrer en suivant la cote Est.

Le Commandant C. H. Davis, a donc lui aussi parfaitement raison quand il dit :

" Captain Folger directed me to report that one ship was " inadequate for the blockade of San Juan, and there *should* " *be more than two ships off that port to establish an* EFFECTUAL " BLOCKADE."

Il est doncclair qu 'il ne se préoccupe, en demandant plus de deux navires, que de la question du blocus commercial, c'est à dire d'obtenir les moyens suffisants pour empêcher les " blockade runners," d'entrer dans le port. Car il est bien certain que des " blockade runners " n'essaieront jamais d'entrer *de jour* dans un port devant lequel se trouve un navire ennemi ; je ne puis pour ma part admettre qu'il existe un capitaine assez naïf, assez stupide pour tenter une semblable entreprise.

Une pareille tentative ne se fera jamais que la nuit et comme un " blockade runner " n'est monté que par des marins, des gens déterminés il entrera facilement dans un port qui n'est bloqué que par *un seul* navire, obligé de se tenir au moins à 6 milles de terre.

Donc, mon avis, comme celui du Captain Folger, est bien que " *there should be more than two ships* (*et il n'y en avait qu'un*) off that port *to establish an effectual blockade.*"

Quant à la question militaire, elle ne peut en aucune manière être confondue avec l'autre ; car le blocus commercial aurait pu être parfaitement complet si le nombre de navires employés avail été suffisant, et par suite, au point de vue des neutres, le blocus aurait été effectif.

Il aurait pu se faire pourtant que le chef de la force navale bloquant ne se soit pas cru en mesure de soutenir avec succès une attaque de l'ennemi essayant de faire lever le blocus ; il aurait dans ce cas demandé des renforts, en prevision d'un combat possible ; mais le blocus n'en aurait pas

moins été effectif et il ne se serait pas servi, dans sa demande de renforts, des expressions déjà citeés :

" There should be more than two ships off that port to establish an effectual blockade " (Captain C. H. Davis).

Ou encore : " In order *to make the blockade* of San Juan *positively effective a considerable force of vessels is needed* off that port * * * making *it easy* AT PRESENT for *blockade-runners.*"

Il ne s'agit toujurs là que de rendre un blocus effectif au point de vue des navires de commerce, des blockade runners.

C en'est pas ainsi que s'exprime un chef militaire qui demande des renforts en prévision d'une attaque possible; dans ce cas, et dans la circonstance présente, il dètaillerait les forces contre lesquelles il suppose avoir á lutter et il specifierait les renforts qu'il estime devoir lui être nécessaires, et qu'il réclame.

En s'exprimant comme ils l'ont fait les commandants Sigsbeé et Folger ne s'occupaient que áu blocus commercial et affirmaient qu'il n'etait pas effectif.

Veuillez agreer, Cher Monsieur Jones l'expression de mes sentiments les plus dévoués.

POIROT,

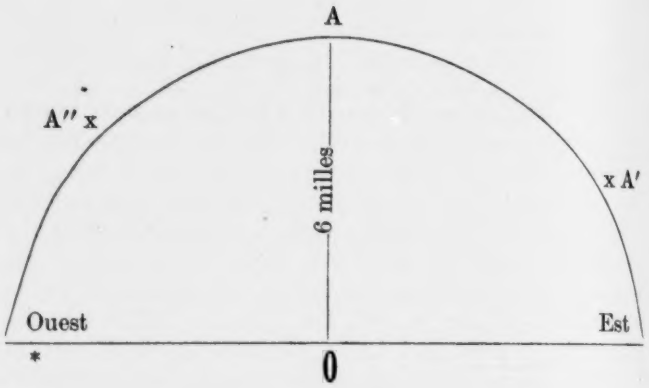
Capitaine de Frégate, Officier de la Légion d'Honneur.

TRANSLATION.

NEW YORK, *April* 7, 1899.

DEAR MR. JONES: You have asked me to make known to you my opinion with regard to the statements made by Commanders C. D. Sigsbee and C. H. Davis, with regard to the blockade of San Juan. I have only the time to reply very hastily to your desire. Here is the opinion that my experience of thirty years in the French navy permits me to give, during which period I have participated myself in different blockades in the North Sea in 1870 and in the China Sea in 1884 and 1885. Commander Sigsbee writes, "that in order to make the blockade of San Juan effective a considerable force of vessels is needed off that port, enough to detach some occasionally to cruise about the island. West of San Juan the coast, although bold, has outlying dangers, making it easy at present for blockade runners," etc., etc.

It is very clear that to his mind it was a question of a commercial blockade to be rendered effective, and that he had in nowise any view of the possibility of an attack by superior forces, as he only mentions blockade-runners, and adds that if the ships he asks for are sent him he will have no fear in scattering them, sending them to cruise at different points of the island. As a matter of fact, one ship alone cannot blockade San Juan in an effective manner, for San Juan is defended by forts which compel a ship to keep at least six miles from the entrance to the fort. Now, what can one ship alone do in these conditions? She has only two ways of acting:



First. To place herself opposite the entrance six miles off at A, and from there watch the entrance; but in this case at night every ship which would shave along the shore, whether coming from the east or from the west, could enter without any difficulty. For that matter this hypothesis is inadmissible, for a ship which is off a hostile shore at night cannot remain stationary in this way, especially when, as in the present case, he knows certainly that the port blockaded possesses means of attack.

Second. To keep cruising upon an arc of a circle having as its center the entrance to the port and as its circumference the range of cannons of the forts—that is to say, six miles. In this second way of proceeding, which appears to me the only one possible, when the blockading ship will be at any point of its course, at A′, for example, she will not see what is taking place in the west. It will be the same with regard

* As there are three miles of shore batteries at the right of the Morro at San Juan, the base of this circle must be proportionately broadened, hus making the blockade still more difficult.

to A" as regards ships which might try to enter by following the eastern shore.

Commander C. H. Davis is also perfectly right when he says:

"Captain Folger directed me to report that one ship was inadequate for the blockade of San Juan, and that there *should be more than two ships off that port to establish an effectual blockade.*"

It is therefore clear that in asking for more than two ships he only treats of the question of commercial blockade—that is to say, to obtain sufficient means to prevent blockade-runners from entering the port, for it is very certain that blockade-runners would never try to enter by day into a port before which an enemy's ship is stationed. For my part I cannot admit that there exists a captain so green, so stupid, as to attempt such an enterprise. Such an attempt will never be made except at night, and as a blockade, runner is only manned by seamen, determined men, she can easily enter a port which is only blockaded by one vessel alone which is obliged to keep herself at least six miles from the shore. Therefore my opinion, like that of Captain Folger, is certainly that "*there should be more than two ships (there was only one) off that port to establish an effectual blockade.*"

As to the military question, it should in nowise be confounded with the other, for the commercial blockade might have been perfectly complete if the number of ships employed had been sufficient, and therefore, as regards neutrals, the blockade would have been effective.

It might have been, nevertheless, that the chief of the naval force blockading found himself incapable of sustaining with success the attack of an enemy trying to break the blockade. In that case he would have called for reinforcements, foreseeing a possible combat; but the blockade would not have been any less effective, and he would not have

used in his request for reinforcements, the expressions already quoted, "There should be more than two ships off that port to establish an effectual blockade" (Capt. C. H. Davis); or again, "In order *to make the blockade* of San Juan *positively effective, a considerable force of vessels is needed* off that port, * * * making *it easy at present* for blockade *runners.*"

Certainly these expressions concern only the rendering of a blockade effective as regards merchant vessels, blockade-runners.

A military chief who calls for reinforcements, foreseeing a possible attack, does not express himself in this way. In this case and under the present circumstances he would detail the forces against which he supposes that he will have to struggle, and would specify the reinforcements which he thinks ought to be necessary for him and which he calls for.

In expressing themselves as they have done, Commanders Sigsbee and Folger contemplated only a commercial blockade and were declaring that it was not effective.

Please receive, dear Mr. Jones, the expression of my most devoted sentiments.

POIROT,
Commander of the French Navy,
(Capitaine de Frégate),
Officer of the Legion of Honor.

THE OLINDE RODRIGUES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

No. 704. Argued April 11, 13, 1899. — Decided May 15, 1899.

A blockade to be binding must be known to exist.

There is no rule of law determining that the presence of a particular force is necessary in order to render a blockade effective, but, on the contrary, the test is whether it is practically effective, and that is a mixed question, more of fact than of law.

While it is not practicable to define what degree of danger shall constitute a test of the efficiency of a blockade, it is enough if the danger is real and apparent.

An effective blockade is one which makes it dangerous for vessels to attempt to enter the blockaded port; and the question of effectiveness is not controlled by the number of the blockading forces, but one modern cruiser is enough as matter of law, if it is sufficient in fact for the purpose, and renders it dangerous for other craft to enter the port.

The blockade in this case was practically effective, and, until it should be raised by an actual driving away by the enemy, it was not open to a neutral trader to ask whether, as against a possible superiority of the enemy's fleet, it was or was not effective in a military sense.

After the captors had put in their proofs, the claimant, without introducing anything further, moved for the discharge and restitution of the steamship, on the ground of the ineffective character of the blockade and because the evidence did not justify a decree of condemnation; and in addition claimed the right to adduce further proofs, if its motion

Statement of the Case.

should be denied. *Held*, that the settled practice of prize courts forbids the taking of further proof under such circumstances.

The entire record in this case being considered, the court is of opinion that restitution of the Olinde Rodrigues should be awarded, without damages, and that payment of the costs and expenses incident to her custody and preservation, and of all costs in the cause, except the fees of counsel, should be imposed upon the ship.

THIS was a libel filed by the United States against the steamship Olinde Rodrigues and cargo in the District Court for South Carolina, in a prize cause, for violation of the blockade of San Juan, Porto Rico. The steamship was owned and claimed by La Compagnie Générale Transatlantique, a French corporation.

The Olinde Rodrigues left Havre, June 16, 1898, upon a regular voyage on a West Indian itinerary prescribed by the terms of her postal subvention from the French government. Her regular course, after touching at Paulliac, France, was St. Thomas, San Juan, Port au Platte or Puerto Plata, Cape Haytien, St. Marque, Port au Prince, Gonaives, and to return by the same ports, the voyage terminating at Havre. The proclamation of the President declaring San Juan in a state of blockade was issued June 27, 1898. The Olinde Rodrigues left Paulliac June 19, and arrived at St. Thomas July 3, 1898, and on July 4, in the morning, went into San Juan, Porto Rico. She was seen by the United States auxiliary cruiser Yosemite, then blockading the port of San Juan.

On the fifth of July, 1898, the Olinde Rodrigues came out of the port of San Juan, was signalled by the Yosemite, and on communicating with the latter asserted that she had no knowledge of the blockade of San Juan. Thereupon a boarding officer of the Yosemite entered in the log of the Olinde Rodrigues an official warning of the blockade, and she went on her way to Puerto Plata and other ports of San Domingo and Haiti. She left Puerto Plata on her return from these ports, July 16, 1898, and on the morning of July 17 was captured by the United States armored cruiser New Orleans, then blockading the port of San Juan, as attempting to enter that port. A prize crew was put on board and the vessel was

taken to Charleston, South Carolina, where she was libelled as before stated, July 22, 1898. Depositions of officers, crew and persons on board the steamship were taken by the prize commissioners *in preparatorio*, in answer to certain standing interrogatories, and the papers and documents found on board were put in evidence. Depositions of officers and men from the cruiser New Orleans were also taken *de bene esse*, but were not considered on the preliminary hearing except on a motion by the District Attorney for leave to take further proofs.

The cause having been heard on the evidence *in preparatorio*, the District Judge ruled, August 13, for reasons given, that the Olinde Rodrigues could not, under the evidence as it stood, be condemned for her entry into the blockaded port of San Juan on July 4, and her departure therefrom July 5, 1898; nor for attempting to enter the same port on July 17; but that the depositions *de bene esse* justified an order allowing further proofs, and stated also that an order might be entered, "discharging the vessel upon stipulation for her value, should the claimant so elect." 89 Fed. Rep. 105. An order was accordingly entered that the captors have ninety days to supply further proof "as to the entry of the 'Olinde Rodrigues' into the port of San Juan, Porto Rico, on July 4, 1898, and as to the courses and movements of said vessel on July 17, 1898;" and "that the claimants may thereafter have such time to offer testimony in reply as may seem proper to the court."

The cargo was released without bond, and on September 16 the court entered an order releasing the vessel on "claimants giving bond by the Compagnie Générale Transatlantique, its owners, without sureties, in the sum of $125,000 conditioned for the payment of $125,000 upon the order of the court in the event that the vessel should be condemned." The bond was not given, and the vessel remained in custody.

Evidence was taken on behalf of the United States, and the cause came on for hearing on a motion by the claimants for the discharge and restitution of the steamship on the grounds: (1) That the blockade of San Juan at the time of the capture of the Olinde Rodrigues was not an effective

blockade; (2) That the Olinde Rodrigues was not violating the blockade when seized.

The District Court rendered an opinion December 13, 1898, holding that the blockade of San Juan was not an effective blockade, and entered a decree ordering the restitution of the ship to the claimants. 91 Fed. Rep. 274. From this decree the United States appealed to this court and assigned errors to the effect: (1) That the court erred in holding that there was no effective blockade of the port of San Juan on July 17, 1898; (2) That the court erred in not finding that the Olinde Rodrigues was captured while she was violating the blockade of San Juan, July 17, 1898, and in not decreeing her condemnation as lawful prize.

Mr. J. P. K. Bryan and *Mr. Assistant Attorney General Hoyt* for appellant.

Mr. Edward K. Jones for appellee.

Mr. Chief Justice Fuller, after making the above statement, delivered the opinion of the court.

We are unable to concur with the learned District Judge in the conclusion that the blockade of the port of San Juan at the time this steamship was captured was not an effective blockade.

To be binding, the blockade must be known, and the blockading force must be present; but is there any rule of law determining that the presence of a particular force is essential in order to render a blockade effective? We do not think so, but on the contrary, that the test is whether the blockade is practically effective, and that that is a question, though a mixed one, more of fact than of law.

The fourth maxim of the Declaration of Paris, (April 16, 1856,) was: "Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy." Manifestly this broad definition was not intended to be literally applied.

The object was to correct the abuse, in the early part of the century, of paper blockades, where extensive coasts were put under blockade by proclamation, without the presence of any force, or an inadequate force; and the question of what might be sufficient force was necessarily left to be determined according to the particular circumstances.

This was put by Lord Russell in his note to Mr. Mason of February 10, 1861, thus: "The Declaration of Paris was in truth directed against what were once termed 'paper blockades;' that is, blockades not sustained by any actual force, or sustained by a notoriously inadequate naval force, such as an occasional appearance of a man-of-war in the offing or the like. . . . The interpretation, therefore, placed by Her Majesty's government on the Declaration was, that a blockade, in order to be respected by neutrals, must be practically effective. . . . It is proper to add, that the same view of the meaning and effect of the articles of the Declaration of Paris, on the subject of blockades, which is above explained, was taken by the representative of the United States at the Court of St. James (Mr. Dallas) during the communications which passed between the two governments some years before the present war, with a view to the accession of the United States to that Declaration." Hall's Int. Law, § 260, p. 730, note.

The quotations from the Parliamentary debates, of May, 1861, given by Mr. Dana in note 233 to the eighth edition of Wheaton on International Law, afford interesting illustrations of what was considered the measure of effectiveness; and an extract is also there given from a note of the Department of Foreign Affairs of France of September, 1861, in which that is defined: "Forces sufficient to prevent the ports being approached without exposure to a certain danger."

In *The Mercurius*, 1 C. Rob. 80, 84, Sir William Scott stated: "It is said, this passage to the Zuyder Zee was not in a state of blockade; but the ship was seized immediately on entering it; and I know not what else is necessary to constitute blockade. The powers who formed the armed neutrality in the last war, understood blockade in this sense; and

Russia, who was the principal party in that confederacy, described a place to be in a state of blockade, when it is dangerous to attempt to enter into it."

And in *The Frederick Molke*, 1 C. Rob. 86, the same great jurist said: "For that a legal blockade did exist, results necessarily from these facts, as nothing farther is necessary to constitute blockade, than that there should be a force stationed to prevent communication, and a due notice, or prohibition given to the party."

Such is the settled doctrine of the English and American courts and publicists, and it is embodied in the second of the instructions issued by the Secretary of the Navy, June 20, 1898, General Order No. 492: "A blockade to be effective and binding must be maintained by a force sufficient to render ingress to or egress from the port dangerous."

Clearly, however, it is not practicable to define what degree of danger shall constitute a test of the efficiency and validity of a blockade. It is enough if the danger is real and apparent.

In *The Franciska*, 2 Spinks, 128, Dr. Lushington, in passing on the question whether the blockade imposed on the port of Riga was an effective blockade, said: "What, then, is an efficient blockade, and how has it been defined, if, indeed, the term 'definition' can be applied to such a subject? The one definition mentioned is, that egress or entrance shall be attended with evident danger; another, that of Chancellor Kent, (1 Kent's Com. 146,) is, that it shall be apparently dangerous. All these definitions are and must be, from the nature of blockades, loose and uncertain; the maintenance of a blockade must always be a question of degree, — of the degree of danger attending ships going into or leaving a blockaded port. Nothing is further from my intention, nor, indeed, more opposed to my notions of the Law of Nations, than any relaxation of the rule that a blockade must be efficiently maintained; but it is perfectly obvious that no force could bar the entrance to absolute certainty; that vessels may get in and get out during the night, or fogs, or violent winds, or occasional absence; that it is most difficult to judge from numbers alone."

"It is impossible," says Mr. Hall, (§ 260,) "to fix with any accuracy the amount of danger in entry which is necessary to preserve the validity of a blockade. It is for the prize courts of the belligerent to decide whether in a given instance a vessel captured for its breach had reason to suppose it to be non-existent; or for the neutral government to examine, on the particular facts, whether it is proper to withhold or to withdraw recognition."

In *The Hoffnung*, 6 C. Rob. 112, 117, Sir William Scott said: "When a squadron is driven off by accidents of weather, which must have entered into the contemplation of the belligerent imposing the blockade, there is no reason to suppose that such a circumstance would create a change of system, since it could not be expected that any blockade would continue many months, without being liable to such temporary interruptions. But when a squadron is driven off by a superior force, a new course of events arises, which may tend to a very different disposition of the blockading force, and which introduces therefore a very different train of presumptions, in favor of the ordinary freedom of commercial speculations. In such a case the neutral merchant is not bound to foresee or to conjecture that the blockade will be resumed." And undoubtedly a blockade may be so inadequate, or the negligence of the belligerent in maintaining it may be of such a character, as to excuse neutral vessels from the penalties for its violation. Thus in the case of an alleged breach of the blockade of the island of Martinique, which had been carried on by a number of vessels on the different stations, so communicating with each other as to be able to intercept all vessels attempting to enter the ports of the island, it was held that their withdrawal was a neglect which "necessarily led neutral vessels to believe these ports might be entered without incurring any risk." *The Nancy*, 1 Acton, 57, 59.

But it cannot be that a vessel actually captured in attempting to enter a blockaded port, after warning entered on her log by a cruiser off that port only a few days before, could dispute the efficiency of the force to which she was subjected.

As we hold that an effective blockade is a blockade so effec-

tive as to make it dangerous in fact for vessels to attempt to enter the blockaded port, it follows that the question of effectiveness is not controlled by the number of the blockading force. In other words, the position cannot be maintained that one modern cruiser though sufficient in fact is not sufficient as matter of law.

Even as long ago as 1809, in *The Nancy*, 1 Acton, 63, where the station of the vessel was sometimes off the port of Trinity and, at others, off another port more than seven miles distant, it was ruled that: "Under particular circumstances a single vessel may be adequate to maintain the blockade of one port and coöperate with other vessels at the same time in the blockade of another neighboring port;" although there Sir William Grant relied on the opinion of the commander on that station that the force was completely adequate to the service required to be performed.

The ruling of Dr. Lushington in *The Franciska*, above cited, was to that effect, and the text books refer to other instances.

The learned District Judge, in his opinion, refers to the treaty between France and Denmark of 1742, which provided that the entrance to a blockaded port should be closed by at least two vessels or a battery on shore; to the treaty of 1760 between Holland and the Two Sicilies prescribing that at least six ships of war should be ranged at a distance slightly greater than gunshot from the entrance; and to the treaty between Prussia and Denmark of 1818, which stipulated that two vessels should be stationed before every blockaded port; but we do not think these particular agreements of special importance here, and, indeed, Ortolan, by whom they are cited, says that such stipulations cannot create a positive rule in all cases even between the parties, "since the number of vessels necessary to a complete investment depends evidently on the nature of the place blockaded." 2 Ortolan, (4th ed.) 330, and note 2.

Nor do we regard Sir William Scott's judgment in *The Arthur*, (1814) 1 Dodson, 423, 425, as of weight in favor of claimants. In effect the ruling sustained the validity of the maintenance of blockade by a single ship, and the case was thus stated: "This is a claim made by one of His Majesty's

ships to share as joint-captor in a prize taken in the river Ems by another ship belonging to His Majesty, for a breach of the blockade imposed by the order in council of the 26th of April, 1809. This order was, among others, issued in the way of retaliation for the measures which had been previously adopted by the French government against the commerce of this country. The blockade imposed by it is applicable to a very great extent of coast, and was never intended to be maintained according to the usual and regular mode of enforcing blockades, by stationing a number of ships, and forming as it were an arch of circumvallation around the mouth of the prohibited port. There, if the arch fails in any one part, the blockade itself fails altogether; but this species of blockade, which has arisen out of the violent and unjust conduct of the enemy, was maintained by a ship stationed anywhere in the neighborhood of the coast, or, as in this case, in the river itself, observing and preventing every vessel that might endeavor to effect a passage up or down the river."

Blockades are maritime blockades, or blockades by sea and land; and they may be either military or commercial, or may partake of the nature of both. The question of effectiveness must necessarily depend on the circumstances. We agree that the fact of a single capture is not decisive of the effectiveness of a blockade, but the case made on this record does not rest on that ground.

We are of opinion that if a single modern cruiser blockading a port renders it in fact dangerous for other craft to enter the port, that is sufficient, since thereby the blockade is made practically effective.

What then were the facts as to the effectiveness of the blockade in the case before us?

In the proclamation of June 27, 1898, occurs this paragraph: "The United States of America has instituted and will maintain an effective blockade of all the ports on the south coast of Cuba, from Cape Frances to Cape Cruz, inclusive, and also of the port of San Juan, in the island of Porto Rico." (Proclamation No. 11, 30 Stat. 34.) The blockade thus announced was not of the coast of Porto Rico, but of the port

of San Juan, a town of less than 25,000 inhabitants, on the northern coast of Porto Rico, with a single entrance. From June 27 to July 14, 1898, the Yosemite, a merchant ship converted into an auxiliary cruiser, blockaded the port. Her maximum speed was fifteen and one half knots; and her armament ten 5-inch rapid firing guns, six 6-pounders, two 1-pounders, with greatest range of three and one half miles. While the Yosemite was blockading the port she ran the armed transport Antonio Lopez aground six miles from San Juan; gave a number of neutral vessels official notice of the blockade; warned off many from the port; and on the 5th of July, 1898, wrote into the log of the Olinde Rodrigues, off San Juan, the official warning of the blockade of San Juan. On July 14 and thereafter the port was blockaded by the armored cruiser New Orleans, whose maximum speed was twenty-two knots, and her armament six 6-inch breech-loading rifles, four 4.7-inch breech-loading rifles, ten 6-pounders, four 1.5-inch guns, corresponding to 3-pounders; four 3-pounders in the tops; four 37-millimetre automatic guns, corresponding to 1-pounders. The range of her guns was five and one half sea miles or six and a quarter statute miles. If stationary, she could command a circle of thirteen miles in diameter; if moving, at maximum speed, she could cover in five minutes any point on a circle of seventeen miles diameter; and in ten minutes any point on a circle of nineteen miles diameter; her electric search lights could sweep the sea by night for ten miles distance; her motive power made her independent of winds and currents; in these respects and in her armament and increased range of guns she so far surpassed in effectiveness the old-time war ships that it would be inadmissible to hold that even if a century ago more than one ship was believed to be required for an effective blockade, therefore this cruiser was not sufficient to blockade this port.

Assuming that the Olinde Rodrigues attempted to enter San Juan, July 17, there can be no question that it was dangerous for her to do so, as the result itself demonstrated. She had had actual warning twelve days before; no reason existed for the supposition that the blockade had been pretermitted or relaxed;

her commander had no right to experiment as to the practical effectiveness of the blockade, and, if he did so, he took the risk; he was believed to be making the attempt, and was immediately captured. In these circumstances the vessel cannot be permitted to plead that the blockade was not legally effective.

After the argument on the motion to discharge the vessel, application was made by counsel for the claimant to the District Judge, by letter, that the Navy Department be requested to furnish the court with all letters or dispatches of the commanders of vessels blockading the port of San Juan in respect to the sufficiency of the force. And a motion was made in this court "for an order authorizing the introduction into the record of the dispatches of Captain Sigsbee and Commander Davis," dated June 27, 1898, and July 26, 1898, and published by the Navy Department in the "Appendix to the Report of the Chief of the Bureau of Navigation, 1898," pp. 224, 225, 642.

To this the United States objected on the grounds that isolated statements transmitting official information to superior officers, and consisting largely of opinion and hearsay, were not competent evidence; that the claimants had been afforded the opportunity to offer additional proof, and had not availed themselves thereof; that if the court desired to have these papers before it, then the Government should be permitted to define their meaning by counter proofs; and certain explanatory affidavits were, at the same time, tendered for consideration, if the motion were granted.

We need not specifically rule on the motion, or as to the admissibility of either the dispatches or affidavits, as we are satisfied that the dispatches have no legitimate tendency to establish that the blockade was not effective so far as the exclusion of trade from this port of the belligerent, whether in neutral or enemy's trading ships, was concerned. This country has always recognized the essential difference between a military and a commercial blockade. The one deals with the exclusion of trade, and the other involves the consideration of armed conflict with the belligerent. The necessity of a greater blockading force in the latter case than in the former is obvious. The difference is in kind, and in degree.

Opinion of the Court.

Our Government was originally of opinion that commercial blockades in respect of neutral powers ought to be done away with; but that view was not accepted, and during the period of the Civil War the largest commercial blockade ever known was established. Dana's Wheat. Int. Law, (8th ed.) p. 671, note 232; 3 Whart. Int. Dig. § 361.

The letters of Captain Sigsbee, of the St. Paul, and of Commander Davis, of the Dixie, must be read in the light of this recognized distinction; and it is to be further remarked that after the letter of Captain Sigsbee of June 27 the New Orleans was sent by Admiral Sampson officially to blockade the port of San Juan, thereby enormously increasing its efficiency.

In his report of June 28, Appendix, Rep. Bur. Nav. 220, 222, Captain Sigsbee describes an attack on the St. Paul off the port of San Juan, June 22, by the Spanish cruiser Isabella II and by the torpedo boat destroyer Terror, in which engagement the St. Paul severely injured the Terror, and drove the attacking force back into San Juan, and in his letter of June 27 he wrote: "It is advisable to constantly keep the Terror in mind as a possible active force; but, leaving her out of consideration, the services to be performed by the Yosemite, of blockading a well-fortified port containing a force of enemy's vessels whose aggregate force is greater than her own, is an especially difficult one. If she permits herself to be driven away from the port, even temporarily, the claim may be set up that the blockade is broken."

It is true that in closing his letter of June 27 Captain Sigsbee said: "I venture to suggest that, in order to make the blockade of San Juan positively effective, a considerable force of vessels is needed off that port, enough to detach some to occasionally cruise about the island. West of San Juan the coast,[1] although bold, has outlying dangers, making it easy at

[1] The coast thus referred to is described in a work entitled "Navigation of the Gulf of Mexico and the Caribbean Sea," issued by the Navy Department, vol. I, 342, thus: "The shore appears to be skirted by a reef, inclosing numerous small cays and islets, over which the sea breaks violently, and it should not be approached within a distance of four miles."

present for blockade runners having local pilots to work in close to the port under the land during the night."

But we are considering the blockade of the port of San Juan and not of the coast, and while additional vessels to cruise about the island might be desirable in order that the blockade should be positively effective, we think it a sufficient compliance with the obligations of international law if the blockade made egress or ingress dangerous in fact, and that the suggestions of a zealous American naval commander, in anticipation of a conflict of armed forces before San Juan, that the blockade should be brought to the highest efficiency in a military as well as a commercial aspect, cannot be allowed to have the effect of showing that the blockade which did exist was, as to this vessel, ineffective in point of law.

And the letter of Commander Davis of the Dixie, of July 26, 1898, appears to us to have been written wholly from the standpoint of the efficiency of the blockade as a military blockade. He says: "Captain Folger kept me through the night of the 24th, as he had information which led him to believe that an attack would be made on his ship during the night. There are in San Juan, Porto Rico, the Terror, torpedo gunboat; the Isabella II, cruiser; a torpedo boat, and a gunboat. There is also a German steamer, which is only waiting an opportunity to slip out." And further: "It is Captain Folger's opinion that the enemy will attempt to raise the blockade of San Juan, and it is my opinion that he should be reënforced there with the least possible delay."

In our judgment these naval officers did not doubt the effectiveness of the commercial blockade, and had simply in mind the desirability of rendering the blockade, as a military blockade, impregnable, by the possession of a force sufficient to successfully repel any hostile attack of the enemy's fleet. The blockade was practically effective; had remained so; and was legal and binding, if not raised by an actual driving away of the blockading force by the enemy; until the happening of which result the neutral trader had no right to ask whether the blockade, as against the possible superiority of the enemy's fleet, was or was not effective in a military sense.

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But was this ship attempting to enter the port of San Juan, on the morning of July 17, when she was captured? It is contended by counsel for the claimant that if the rulings of the District Court should be disapproved of, an opportunity should still be given it to put in further proofs in respect of the violation of the blockade, notwithstanding it had declined to do so under the order of that court. That order gave ninety days to the captors for further proofs, and to the claimant, thereafter, such time for testimony in reply as might seem proper. After the captors had put in their proofs, the claimant, without introducing anything further, moved for the discharge and restitution of the steamship on the ground of the ineffective character of the blockade, and because the evidence did not justify a decree of condemnation; but undertook to reserve the right to adduce further proof, in the event that its motion should be denied. The District Court commented with disfavor upon such an attempt, and we think the claimant could not as matter of right demand that the cause should be opened again. The settled practice of prize courts forbids the taking of further proofs under such circumstances; and in the view we take of the cause it would subserve no useful purpose to permit this to be done.

On the proofs before us the case is this: The Olinde Rodrigues was a merchant vessel of 1675 tons, belonging to the Compagnie Générale Transatlantique, engaged in the West India trade and receiving a subsidy from the French government for carrying its mails on an itinerary prescribed by the postal authorities. Her regular course was from Havre to St. Thomas, San Juan, Puerto Plata and some other ports, returning by the some ports to Havre. She sailed from Havre, June 16, and arrived at St. Thomas, July 3, and at San Juan the morning of July 4. The proclamation of the blockade of San Juan was issued June 27, while she was on the sea. The United States cruiser Yosemite was on duty in those waters, blockading the port of San Juan, and when her commander sighted the Olinde Rodrigues coming from the eastward toward the port he made chase, but before reaching her she had turned in and was under the protection

of the shore batteries. He lay outside until the next morning — the morning of July 5 — when he intercepted the steamship as she was coming out, and sent an officer aboard, who made this entry in her log: "Warned off San Juan, July 5th, 1898, by U. S. S. Yosemite. Commander Emory. John Burns, Ensign, U. S. Navy." The master of the Olinde Rodrigues, whose testimony was taken *in preparatorio*, testified that when he entered San Juan, July 4, he had no knowledge that the port was blockaded, and that he first heard of it from the Yosemite on July 5, when he was leaving San Juan. After the notification he continued his voyage on the specified itinerary, arriving at Gonaives, the last port outward, on July 12. On his return voyage he stopped at the same ports, taking on freight, passengers and mail for Havre. At Cape Haytien, on July 14, he received a telegram from the agent of his company at San Juan, telling him to hasten his arrival there by one day in order to take on fifty first class passengers, and he replied that the ship would not touch at San Juan, but would be at St. Thomas on the 17th. The purser testified that on the receipt of the cable from the consignee at San Juan, he told the captain "that since we were advised of the blockade of Porto Rico by the war ship, it was absolutely necessary not to stop;" and that "before me, the agent in Cape Haytien, sent a cablegram, saying 'Daim [the vessel] will not stop at San Juan, the blockade being notified.'"

The ship's master further testified that on the outward voyage at each port he had warned the agent of the company and the postal department that he would not touch at Porto Rico, that he would not take passengers for that point, and that the letters would be returned to St. Thomas, and that having received his clearance papers at Puerto Plata at half-past five o'clock on the evening of July 15, he did not leave until six o'clock in the morning of July 16, as he did not wish to find himself at night along the coast of Porto Rico.

The ship was a large and valuable one, belonging to a great steamship company of world-wide reputation; she was on her return voyage laden with tobacco, sugar, coffee and other products of that region; she had no cargo, passengers or mail for

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San Juan; she had arrived off that port in broad daylight, intentionally according to the captain; her regular itinerary on her return to France would have taken her from Port au Platte to San Juan, and from San Juan to St. Thomas, and thence to Havre, but as San Juan was blockaded and she had been warned off, and could not lawfully stop there, her route was from Port au Platte to St. Thomas, which led her directly by and not many miles from the port of San Juan.

The only possible motive which could be or is assigned for her to attempt to break the blockade is that the consignee at San Juan cabled the captain at Cape Haytien that he must stop at San Juan and take fifty first class passengers. At this time the fleet of Admiral Cervera had been destroyed; Santiago had fallen; and the long reign of Spain in the Antilles was drawing to an end. Doubtless the transportation of fifty first class passengers would prove remunerative, especially as some of them might be Spanish officials, and Spanish archives and records, and Spanish treasure, might accompany them if they escaped on the ship. It is forcibly argued that these are reasonable inferences, and afforded a sufficient motive for the commission of the offence. But as, where the guilty intent is established, the lack of motive cannot in itself overthrow it, so the presence of motive is not in itself sufficient to supply the lack of evidence of intent. Now, in this case, the captain not only testified that he answered the cable to the effect that he should not stop at San Juan, but the purser explicitly stated that the agent at Cape Haytien sent the telegram for the captain, specifically notifying the agent at San Juan that the ship would not stop there, the blockade having been notified. It is true that the cablegram was not produced, but this was not to be expected in taking the depositions *in preparatorio*, and particularly as it was not the captain's own cablegram, but that of the agent at Cape Haytien. There is nothing in the evidence to the contrary, and under the liberality of the rules of evidence in the administration of the civil law, we must take this as we find it, and, as it stands, the argument that a temptation was held out is answered by the evidence that it was resisted.

Such being the situation, and the evidence of the ship's officers being explicit that the vessel was on her way to St. Thomas and had no intention of running into San Juan, the decree in her favor must be affirmed on the merits, unless the record elsewhere furnishes evidence sufficient to overcome the conclusion reasonably deducible from the facts above stated.

Among the papers delivered to the prize master were certain bills of health, five of them by consuls of France, namely, July 9, from St. Marc, Haiti, giving the ship's destination as Havre, with intermediate ports; July 11, from Gonaives, Haiti, giving no destination; July 13, from Port au Prince, July 14, from Cape Haytien, July 15, from Puerto Plata, all naming Havre as the destination; and three by consuls of Denmark, July 13, from Port au Prince, July 14, from Cape Haytien, and July 15, from Puerto Plata, all naming St. Thomas as the destination. When the captain testified August 2, in answer to the standing interrogatories, he said nothing about any Spanish bills of health. The deposition was reread to the captain, August 3, and on the next day, August 4, he wrote to the prize commissioners desiring to correct it, saying: "I fear I have badly interpreted several questions. I was asked if I had destroyed any papers on board or passports. I replied, no. The papers — documents — on board for our voyage had been delivered up proper and legal to the prize master. This is absolutely the truth, not including in the documents two Spanish bills of health, one from Port au Prince and one from Cape Haytien, which we found in opening our papers, although they had not been demanded. Not having any value for us, I said to the steward to destroy them on our arrival at Charleston, as we often do with papers that are useless to us. The regular expedition only counts from the last port, which was Puerto Plata, and I refused to take it from our agent for Porto Rico. I swear that at my examination I did not think of this, and it is only on my return from signing that the steward recalled it to me. I never sought to disguise the truth, since I wish to advise you of it as soon as possible."

On the 5th of August the purser answered the interroga-

tories, and testified that papers were given him by the consignees of the steamer at Port au Prince in a box at the time of sailing, and he found in the box one manifest of freight in ballast, and it was the same thing at Cape Haytien. At Puerto Plata the agent of the company came on board on their arrival there, and "the captain told him that there was no Spanish clearance; there was no need of it, and it was not taken." The captain said to the agent "it was not necessary, because we are not going to San Juan, being notified of the blockade." "When we arrive in a port we put up a placard of the date of departure and the time of sailing and the destination, and it was put up by my personal order from the captain that we sailed for St. Thomas directly, and it was fixed up in the night of the 15th of July. . . . We were to start on the morning of the 16th, at 6 o'clock in the morning, the captain saying he did not want to fall into the hands of the American cruisers during the night. The night before our arrival in Charleston, the doctor says to me, 'I have a bill of health, Spanish account, from Cape Haytien and Port au Prince,' and I told him I would speak to the captain and ask him what to do with these papers that I had found in sorting my papers — these papers in the pigeon holes. I told the captain that morning, and he told me that we had better destroy them, because we don't want them; that it is not our expedition, and that a true exposition is valuable only for the last port to the Spanish port."

On the 5th the captain was permitted to testify, in explanation, saying, among other things: "The reason that we did not give up the two bills of health is because they did not form a part of the clearance of our ship for our itinerary, and they were left in the pigeon holes where they were. It was at the time of our arrival at the quarantine at Charleston that the purser spoke to me of them, and I told him that they were good for nothing and to tear them up. The captain wishes to add that he did not remember the instance the other day about the destruction of papers, that he has just told us about, and that he never had any intention to disguise anything or to deceive."

Counsel for the Government insist that the intention of the Olinde to run the blockade is necessarily to be inferred from the possession of these bills of health and their alleged concealment and destruction. Doubtless the spoliation of papers, and, though to a less degree, their concealment, is theoretically a serious offence, and authorizes the presumption of an intention to suppress incriminating evidence, though this is not an irrebuttable presumption.

In *The Pizarro*, 2 Wheat. 227, 241, the rule is thus stated by Mr. Justice Story: "Concealment, or even spoliation of papers is not of itself a sufficient ground for condemnation in a prize court. It is, undoubtedly, a very awakening circumstance, calculated to excite the vigilance, and to justify the suspicions of the court. But it is a circumstance open to explanation, for it may have arisen from accident, necessity or superior force; and if the party in the first instance fairly and frankly explains it to the satisfaction of the court, it deprives him of no right to which he is otherwise entitled. If, on the other hand, the spoliation be unexplained, or the explanation appear weak and futile; if the cause labor under heavy suspicions, or there be a vehement presumption of bad faith, or gross prevarication, it is made the ground of a denial of further proof, and condemnation ensues from defects in the evidence which the party is not permitted to supply."

It should be remembered that the first deposition of the captain was given in answer to standing interrogatories, and not under an oral examination; that the statute (Rev. Stat. § 4622) forbade the witness "to see the interrogatories, documents or papers, or to consult counsel, or with any persons interested, without special authority from the court;" that he was born and had always lived in France, and was apparently not conversant with our language; indeed, he protested, as "neither understanding nor speaking English," "against all interpretation or translation contrary to my thought;" that the deposition having been reread to him the day after it was taken, he detected its want of fulness, and immediately wrote the prize commissioners on the subject with a view to cor-

rection; and that it was after this, and not before, that the purser testified.

Transactions of this sort constitute in themselves no ground for condemnation, but are evidence, more or less convincing, of the existence of such ground; yet, taking the evidence in this case together, we are not prepared to hold that the explanation as to how these bills came to be received on board, neglected when the papers were surrendered, and finally torn up, was not sufficient to obviate any decisive inference of objectionable intention.

The Government further insisted that the Olinde Rodrigues refused to obey the signal from the New Orleans to heave to and stop instantly, and turned only after she had fired, and that this conclusively established an intention to violate the blockade. The theory of the Government is that the French ship purposely held on so as to get under the protection of the batteries of San Juan.

The log of the Olinde Rodrigues states: "6.30, noticed the heights of San Juan. At 7.20, took the bearings of the fortress at 45 degrees, eight miles and one half crosswise. Noticed, at 7.50, a man-of-war. At 8.10, she signalled 'J. W.,' ["heave to and stop instantly."] I went towards it and made arrangements in order to receive the whale boat which is sent to us."

In a communication to the Ambassador of France at Washington, written July 17, and purporting to give a full account of the matter, the captain said that he "was some time before seeing her signal, on account of the distance and of the sun. Suspecting what she wanted, I hoisted the 'perceived' and stopped."

He testified that he turned his vessel to the war ship before the gun was fired, which was at 8.12, but on this point the evidence is strongly to the contrary. We are inclined to think that some allowance should be made for imperfect recollection in the rapid passage of events. The Olinde Rodrigues was comparatively a slow sailer, (ten to twelve knots,) and if the captain stopped on seeing the signal, and turned towards the war ship with reasonable promptness, a settled purpose to

defy the signal ought not to be imputed, whether she started towards the New Orleans just before, just after, or just as the shot was fired.

The stress of the contention of the Government is, however, that the Olinde Rodrigues was on a course directly into the port of San Juan at the time her progress was arrested. It is extremely difficult to be precise in such a matter, as her course to reach St. Thomas necessarily passed in face of San Juan. The captain attached to his explanatory affidavit a sketch, "showing the usual route and the actual route which he was taking at the time of the capture, with the position of the capturing ship and his own ship," as follows, see p. 531.

But it appears from the entries of the second officer on the log of the Olinde Rodrigues that the ship was from one to five o'clock in the morning of July 17 on the course, (as corrected,) S. 69 E., and that from six to eight o'clock the course was S. 73 E.

The captain testified that at the time of capture: "I had just passed the port of San Juan, about 7 or 8 miles eastward of the port, and about 9 miles from shore, about 9 miles from Morro. They judged the distance in passing as they do from all points."

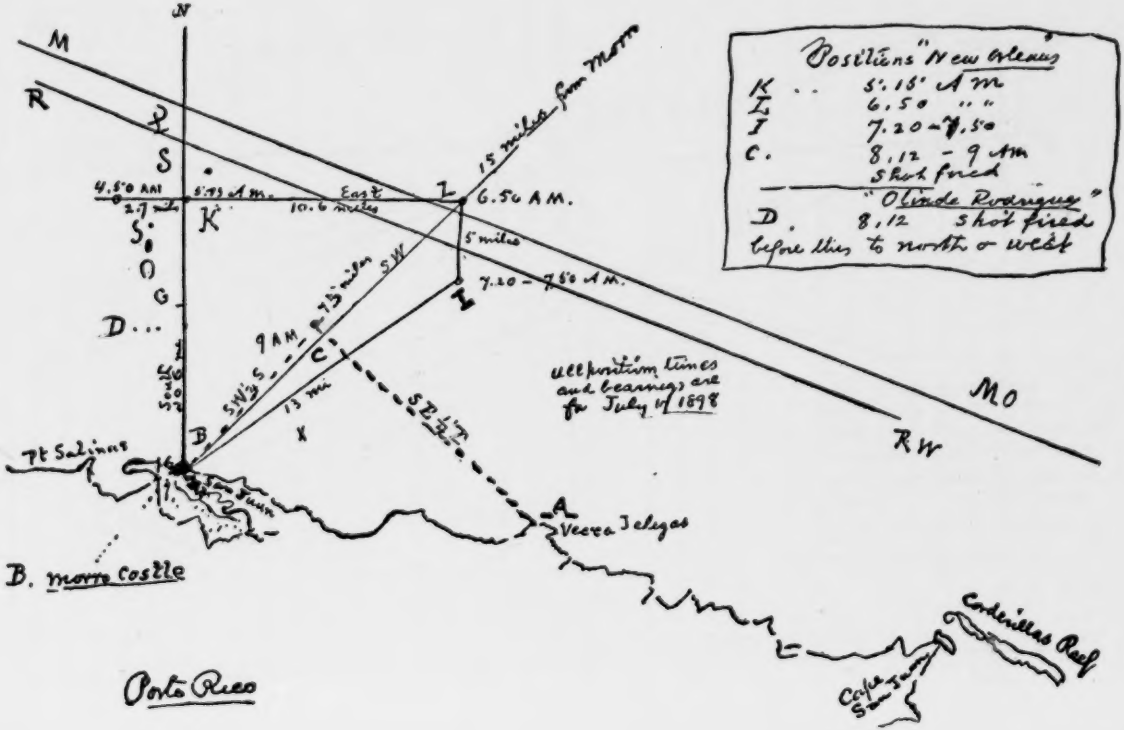
The second officer said that "they were 9 miles from San Juan after having passed the port of San Juan and gone 4 miles east of it."

This testimony strikingly confirms Captain Folger's candid expression of opinion that though the master of the Olinde Rodrigues may have been going in and out of that port for years, he did not measure the distances, but "would run so far down the coast and order them to steer to a certain point to head in."

The commander of the New Orleans admitted "that south 69 is the proper course beforehand for the Culebra Passage," (the passage through which to reach St. Thomas,) but contested that the French vessel was making that course.

Lieutenant Rooney, the navigator of the New Orleans, laid down the positions upon a chart as follows, see p. 532.

Meridian of Paris
Actual Course
S.69 E
Porto-Rico
Arecibo
N.
S.
E.
N.7° E
8 o'clock A.M. 17th Feb.
A. position of the vessel from Morro Moaning at 8 o'clock in the morning
B. Stopping of the Olinde and meeting with the cruiser New Orleans, near which remained in different positions until 10 minutes past 1 P.M.


N
M
R
S
K
S.
O
G
D
Positions "New Orleans"
K . . 5:15 A M
L 6.50 " "
I 7.20 - 7.50
C. 8.12 - 9 AM
Shot fired
"Olinde Rodrigues"
D. 8.12 Shot fired
before lies to north or west
15 miles from Morro
4.50 AM
2.7 mi
5:45 A.M.
East
10.6 miles
L
6.56 A.M.
5 miles
7.20 - 7.50 A.M.
9 AM
9.15 miles
SW
SW½S
13 mi
C
SE½E
Ascertained times and bearings are for July 4 1898
MO
RW
Pt Salinas
B
X
A
Vieras Islets
B. Morro Castle
Porto Rico
Cordillera Reef
Cabo Santo

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The point C is seven and two thirds miles from Morro, bearing S. W., and five miles from point D, the intersection of a line drawn west with north and south line through Morro. D is five and two thirds miles from Morro. The range of Morro guns was six and one half miles, and the range of the shore batteries, three miles east of Morro, also six and one half miles. According to this plat, the Olinde Rodrigues was slightly within the range of the Morro guns, but not within the range of the shore batteries. The New Orleans when she fired was close to the range of the shore batteries and something over a mile outside of the extreme range of the Morro guns.

And it is urged that the conclusion is inevitable that the French ship intended to run into the port and to draw the pursuing cruiser within the range of the Spanish guns. If her being in the neighborhood were not satisfactorily explained; if she persistently ignored the signal of the cruiser; and if her course was a course into the port of San Juan and not a proper course to reach St. Thomas, then the conclusion may be admitted; but it is not denied that she was in the neighborhood in the discharge of her duty, and we have already seen that she may be consistently regarded as not having defied the signal.

On the part of the captors, the witnesses concurred that the Olinde Rodrigues' course was laid for the port of San Juan, while on her behalf this was denied, except so far as her course for St. Thomas took her near the blockaded port. In addition to the witnesses from the New Orleans the telegraph operator on the Morro testified that the Olinde Rodrigues was coming directly toward the Morro, but changed her course when the shot was fired.

A principal reason given by the witnesses for concluding that the Olinde Rodrigues was making for San Juan was that her masts, as seen from the deck of the New Orleans, were open, thus indicating that she was sailing south or toward the port of San Juan. It was admitted that this would not necessarily be so unless the New Orleans was on the same line east and west with the other vessel, or, in other words, if the

New Orleans were to the north of the Olinde Rodrigues, the latter's masts might appear open without necessarily indicating that she was sailing south, or towards the land. Lieutenant Rooney did not see her until after she was captured. He is positive as to the approximate position of the New Orleans early in the morning before the Olinde Rodrigues was sighted, which had not occurred when he went below at 7.30, and he is positive as to the position of the New Orleans after the capture. He places the position of the New Orleans at 6.50, when the last bearing observation was taken, at fifteen miles north of the coast and of the Morro. At nine o'clock bearings were again taken, and she was about seven and two thirds miles from the Morro. Lieutenant Rooney explained in his testimony the proper courses for a vessel sailing to St. Thomas, and stated that several courses might be properly steered, that one of them would be to pass about twelve miles north of the harbor of San Juan, and that there was nothing impracticable in a vessel reaching Culebra Point, with a view of going to St. Thomas, on a course of S. 69 E. from midnight to 5 o'clock, and a change at 5 o'clock to S. 73 E. He also testified that a vessel bound for San Juan on an ordinary commercial voyage would have been nearer the shore than where the Olinde Rodrigues was when she was captured, and that it was probable that if she intended to go to San Juan and avoid the New Orleans she would have hugged the shore and not been out at sea.

Some of the evidence, in short, had a tendency to show that the Olinde Rodrigues, when sailing on a proper course for St. Thomas, would be drawing to the south, and that the New Orleans was to the north of her, in which case, obviously, the nearer the vessels approached the more open would the masts of the Olinde Rodrigues appear. But the clear preponderance was that the captured ship was to the west of a north and south line drawn through Morro, and running nearly south just before or when the New Orleans fired.

It is impossible to deny that the testimony of Captain Folger, the commander of the New Orleans, and of his officers, was extremely strong and persuasive to establish that the

Olinde Rodrigues, when brought to, was intentionally heading for San Juan, and pursuing her course in such a manner as to draw the blockading cruiser in range of the enemy's batteries, and yet we must consider it in view of the evidence on behalf of the captured ship, and of the undisputed facts tending to render it improbable that any design of attempting to violate the blockade was entertained. The Olinde Rodrigues had neither passengers nor cargo for San Juan; in committing the offence, she would take the risk of capture or of being shut up in that port; she was a merchantman engaged in her regular business and carrying the mails; she was owned by a widely known and reputable company; her regular course, though interrupted by the blockade of that port, led directly by it, and not far from it; and the testimony of her captain and officers denied any intention to commit a breach.

The evidence of evil intent must be clear and convincing before a merchant ship belonging to citizens of a friendly nation will be condemned. And on a careful review of the entire evidence, we think we are not compelled to proceed to that extremity.

But, on the other hand, we are bound to say that, taking all the circumstances together and giving due weight to the evidence on behalf of the captors, probable cause for making the capture undoubtedly existed; and the case disclosed does not commend this vessel to the favorable consideration of the court.

Probable cause exists where there are circumstances sufficient to warrant suspicion though it may turn out that the facts are not sufficient to warrant condemnation. And whether they are or not cannot be determined unless the customary proceedings of prize are instituted and enforced. *The Adeline*, 4 Cranch, 244, 285; *The Thompson*, 3 Wall. 155. Even if not found sufficient to condemn, restitution will not necessarily be made absolutely, but may be decreed conditionally as each case requires, and an order of restitution does not prove lack of probable cause. *The Adeline, supra; Jennings* v. *Carson*, 4 Cranch, 2, 28, 29.

In the statement of Sir William Scott and Sir John Nicholl,

transmitted to Chief Justice Jay, then Minister to England, by Sir William Scott, September 10, 1794, "the general principles of proceeding in prize causes, in British Courts of Admiralty, and of the measures proper to be taken when a ship and cargo are brought in as prize within their jurisdictions," are set forth as laid down in an extract from a report made to the King in 1753 "by Sir George Lee, then Judge of the Prerogative Court, Dr. Paul, His Majesty's Advocate General, Sir Dudley Rider, His Majesty's Attorney General, and Mr. Murray, (afterwards Lord Mansfield,) His Majesty's Solicitor General;" and many instances are given where in the enforcement of the rules "the law of nations allows, according to the different degrees of misbehavior, or suspicion, arising from the fault of the ship taken, and other circumstances of the case, costs to be paid, or not to be received, by the claimant, in case of acquittal and restitution." Wheaton on Captures, Appendix, 309, 311, 312; Pratt's Story's Notes, p. 35.

In *The Appollon*, 9 Wheat. 362, 372, Mr. Justice Story said: "No principle is better settled in the law of prize than the rule that probable cause will not merely excuse, but even, in some cases, justify a capture. If there be probable cause, the captors are entitled, as of right, to an exemption from damages; and if the case be of strong and vehement suspicion, or requires further proof to entitle the claimant to restitution, the law of prize proceeds yet farther, and gives the captors their costs and expenses in proceeding to adjudication."

Section 4639 of the Revised Statutes contemplates that, under circumstances, all costs and expenses shall remain charged on the captured vessel though she be restored, and this court has repeatedly held that damages and costs will be denied where there was probable cause for seizure, and that sometimes costs will be awarded to the captors. *The Venus*, 5 Wheat. 127; *The Thompson*, 3 Wall. 155; *The Springbok*, 5 Wall. 1; *The Dashing Wave*, 5 Wall. 170; *The Sir William Peel*, 5 Wall. 517; *The Peterhoff*, 5 Wall. 28, 61, 62.

In *The Dashing Wave*, Chief Justice Chase said: "We think it was the plain duty of a neutral claiming to be engaged in trade with Matamoras, under circumstances which

warranted close observation by the blockading squadron, to keep his vessel, while discharging or receiving cargo, so clearly on the neutral side of the boundary line as to repel, so far as position could repel, all imputation of intent to break the blockade. He had no right to take, voluntarily, a position in the immediate presence of the blockading fleet, from which merchandise might be so easily introduced into the blockaded region. We do not say that neglect of duty, in this respect, on the part of the brig, especially in the absence of positive evidence that the neglect was wilful, calls for condemnation; but we cannot doubt that under the circumstances described, capturing and sending in for adjudication was fully warranted."

In *The Springbok*, the ship was restored but costs and damages were not allowed because of the misconduct of the master.

In *The Peterhoff*, payment of costs and expenses by the ship was decreed as a condition of restitution. The Peterhoff was captured by the United States vessel of war Vanderbilt on suspicion of intent to run the blockade and of having contraband on board. Her captain refused to take his papers to the Vanderbilt, and, in addition, papers were destroyed and a package was thrown overboard. The Peterhoff was searched, and it is stated in the opinion: "The search led to the belief on the part of the officers of the Vanderbilt that there was contraband on board, destined to the enemy. This belief, it is now apparent, was warranted. It was therefore the duty of the captors to bring the Peterhoff in for adjudication, and clearly they are not liable for the costs and expenses of doing so." The court then commented on the destruction of papers, and the throwing overboard of the package, in regard to which it was unable to credit the representations of the captain, but in view of the other facts in the case, did not extend the effect of the captain's conduct and the incriminating circumstances to condemnation.

The case before us falls plainly within these rulings. This vessel had gone into San Juan on July 4, although the captain had heard of the blockade at St. Thomas, but he says he had

not been officially notified of it; he telegraphed to the consul at San Juan to know, and was answered that they had received no official notice from Washington that the port was blockaded; he also heard while in San Juan that "it would be blockaded some future time, but that was not officially." The vessel was boarded and warned by the Yosemite on July 5, and the warning entered on her log. This imposed upon her the duty to avoid approaching San Juan, on her return, so nearly as to give just cause of suspicion, yet she so shaped her course as inevitably to invite it.

When the New Orleans succeeded the Yosemite her commander was informed of the facts by his predecessor, and knew that whatever the right of the Olinde Rodrigues to be in those waters, she could not lawfully place herself so near the interdicted port as to be able to break the blockade with impunity. But when he sighted her the ship was on a course to all appearance directly into that port, and steadily pursuing it. And when he signalled, the Olinde Rodrigues apparently did not obey, but seemingly persisted on her course, and that course would in a few moments have placed her within the range of the guns of Morro and of the shore batteries. In fact, when the shot was fired she was within the range of the Morro's guns. The evidence is overwhelming that she did not change her course until after the shot was fired, even though she may have stopped as soon as she saw the signal. The turning point into the Culebra or Virgin Passage was perhaps forty miles to the eastward, and while she could have passed the port of San Juan on the course she was on, it would have been within a very short distance. The disregard of her duty to shun the port and not approach it was so flagrant that the intention to break the blockade was to be presumed, though we do not hold that that was a presumption *de jure*.

The ship's log was not produced until three hours after she was boarded, and it now appears that the papers furnished the boarding officer, "said to be all the ship's papers," did not include two Spanish bills of health in which San Juan was entered as the vessel's destination. These were destroyed after the ship reached Charleston, and were, therefore, in the ship's

possession when the other papers were delivered. Had they been shown, as they should have been, can it be denied that they would have furnished strong corroboration of criminal intent? Or that their destruction tended to make a case of "strong and vehement suspicion"?

The entire record considered, we are of opinion that restitution of the Olinde Rodrigues should be awarded, without damages, and that payment of the costs and expenses incident to her custody and preservation, and of all costs in the cause except the fees of counsel, should be imposed upon the ship.

The decree of the District Court will be so modified, and

As modified affirmed.

Mr. Justice McKenna dissented on the ground that the evidence justified condemnation.